84-1582
NO.

Office - Supreme Court, U.S.
FILED
APR 5 1985
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1984

R. S. MARTIN, JR., ET AL

Petitioners,

versus

KILGORE FIRST BANCORP, INC.

and

KILGORE FIRST NATIONAL BANK

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI VOL. I

CHARLES H. CLARK
P. O. Box 98
Tyler, Texas 75710
Telephone: 214/593-2514

Attorney for Petitioners

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

55

QUESTION PRESENTED

Are the provisions of 12 U.S.C. § 215(d) satisfied by the auction of stock in a bank holding company incorporated under the laws of the State of Texas or must stock in a national banking association be auctioned to properly comply with 12 U.S.C. § 215(d)?

LIST OF INTERESTED PARTIES

(1) R. S. Martin, Jr.
(2) Coca-Cola Bottling Co. (Biedenharn)
(3) James D. Ballinger
(4) Helen George Bolt
(5) Herbert Cashen
(6) Evelyn Cashen
(7) Herbert Cashen II
(8) Shack Cashen
(9) Gregory Cashen
(10) Mrs. Walter Chandler
(11) Alleyn Crim
(12) John T. Crim, Jr.
(13) L. N. Crim, Sr.
(14) L. N. Crim, Jr.
(15) Charles Duvall
(16) Crown Dickson
(17) D. L. Griffin
(18) Harold Hobenicht
(19) Louise Huffman
(20) Fulton Johnston
(21) James Dick Laird
(22) Mary F. Love
(23) E. B. Mobley
(24) Maxine L. Mobley
(25) Robert Mann c/o Omnibus Corporation
(26) Robert C. Overton
(27) Lois Laird Overton
(28) Robert Carter Overton III
(29) Nadine U. Parks
(30) Nell Laird Pederson
(31) Mrs. Camie Reich
(32) Maud Overton Stocker
(33) William Tennis
(34) Kilgore First National Bank
(35) Kilgore First Bancorp, Inc.

TABLE OF CONTENTS

	Page
Question Presented	i
List of Interested Parties	ii
Table of Contents	iii
Table of Authorities	iv
Opinion Below	1
Statement of Jurisdiction	2
Statutes Construed	3
Statement of the Case	4
Reason for Granting Certiorari	7
Argument	8
Conclusion	22
Certificate of Service	24
Appendix A—Text of 12 U.S.C. § 215	A-1
Appendix B—Text of Fifth Circuit Opinion in *Martin v. Kilgore First Bancorp, Inc.*	A-6
Appendix C—Text of District Court Findings and Conclusions in *Martin v. Kilgore First Bancorp, Inc.*	A-17
Appendix D—Excerpts from Kilgore First Bancorp, Inc. Prospectus	Vol. II, A-27
Appendix E—Denial of Rehearing by United States Court of Appeals for the Fifth Circuit	Vol. II, A-111

TABLE OF AUTHORITIES

CASES: **PAGE**

Central-Penn National Bank v. Portner,
201 F.2d 607 (3d Cir. 1953) 21
Ellis v. State National Bank of Alabama,
434 F.2d 1024 (5th Cir. 1970) 13
Martin v. Kilgore First Bancorp, Inc.,
747 F.2d 1024 (5th Cir. 1984) 17, 18, 19, 21

STATUTES:

12 U.S.C. § 83 12
12 U.S.C. § 215 . . . . . 2, *et seq.*
12 U.S.C. § 215a 10, 12, 13
12 U.S.C. § 215b 13
12 U.S.C. § 1842 5
26 U.S.C. § 351 4
28 U.S.C. § 1254(1) 2
28 U.S.C. § 1331 2
28 U.S.C. § 2101(c) 2
28 U.S.C. § 2201 2

RULES:

United States Supreme Court Rule 17.1(c) 8
United States Supreme Court Rule 20.4 2

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

R. S. MARTIN, JR., ET AL

Petitioners,

versus

KILGORE FIRST BANCORP, INC.

and

KILGORE FIRST NATIONAL BANK

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

COMES NOW, R. S. MARTIN, JR., ET AL, Petitioners, pursuant to United States Supreme Court Rule 21 and hereby petitions for a Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Fifth Circuit in this cause.

OPINION BELOW

The official reference to the decision of the Court of

Appeals for the Fifth Circuit is *Martin v. Kilgore First Bancorp, Inc.*, 747 F.2d 1024 (5th Cir. 1984).

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 7, 1984. Petitioners' Motion for Rehearing was denied by the United States Court of Appeals for the Fifth Circuit on January 7, 1985. This Petition for a Writ of Certiorari was filed within ninety days from the date rehearing was denied by the United States Court of Appeals for the Fifth Circuit and is, therefore, timely filed pursuant to 28 U.S.C. § 2101(c) and United States Supreme Court Rule 20.4. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES CONSTRUED

This case involves the proper construction of 12 U.S.C. § 215, specifically subsection (d), the full text of which is set forth verbatim beginning at Appendix A—A-1.

STATEMENT OF THE CASE

This is a Petition to the United States Supreme Court requesting issuance of a Writ of Certiorari to review a Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit. Said Judgment and Opinion affirmed the rulings made by the United States District Court for the Eastern District of Texas which, as the Court of first instance, properly exercised its jurisdiction over this matter by virtue and authority of 28 U.S.C. §§ 1331 and 2201. The pertinent facts underlying Petitioners' request for issuance of a Writ of Certiorari from this Honorable Court are set forth as follows:

Sometime in 1980 or 1981, the controlling shareholders (the Fender interests) of Kilgore First National Bank (First National I) proposed a plan of reorganization to its board of directors whereby the ownership of First National I would be converted from individual shareholder ownership to bank holding company ownership. This proposal was initially rejected by a majority of the board of directors because it was not considered to be in the best interests of all the shareholders of First National I.

Subsequently, the Fender interests succeeded in having several of the directors who had voted against the reorganization plan removed. With these new directors in place, the Fender interests were then able to secure approval of their reorganization plans from a majority of the board of First National I as it was now comprised.

Because of the substantial dissent expressed by many of First National I's shareholders, the Fender directors realized that a traditional voluntary tender offer would not be feasible. Instead, the change of ownership of First National I would have to be accomplished through the use of an acquisition vehicle known as a reverse triangular merger in order that shareholders dissenting from the reorganization could be effectively eliminated by the Fender interests. This type of merger has three steps: (1) the controlling shareholders of an existing bank establish a bank holding company; (2) these same controlling shareholders then apply to the appropriate authorities to charter an interim bank which is wholly owned by the holding company; and (3) the board of directors of the existing bank and the interim bank agree to merge or consolidate the two banks, subject to approval of the Comptroller of the Currency (Comptroller), thereby forming the

surviving bank. If the combination of the interim bank and the existing bank results in one of the banks continuing to exist while the other ceases to exist, the transaction is termed a merger. However, where both banks cease to exist and a new bank is formed, as is the case in these proceedings, the combination is referred to as a consolidation.

In contrast to the tender offer method of acquisition which is essentially voluntary, *i.e.*, bank shareholders have the option to reject or accept the tender offer of the holding company, merger or consolidation acquisitions are involuntary in the sense that if the requisite number of shareholders approve the merger or consolidation, all bank shareholders are compelled to either become shareholders of the holding company or to exercise their statutory rights of dissent which are enumerated at 12 U.S.C. § 215(d). Under this subsection, dissenting shareholders of an existing bank that has been consolidated are entitled to be paid the appraised value of the shares they formerly owned in the existing bank and they are further entitled to receive any excess over that value generated by an auction of the shares of the consolidated banking association which they would have received but for their dissent.

In order for the holding company to take advantage of the tax-free exchange provisions of Section 351 of the Internal Revenue Code, in the context of its acquisition of an existing bank, at least 80% of the outstanding stock of the bank sought to be acquired must be purchased. Because Petitioners, who owned over 20% of the outstanding stock of First National I, indicated that they would resist any attempt to convert the bank to holding company ownership, the exchange would have been fully taxable if the tender offer method had been used. However, the reverse triangular merger method allowed the Fender interests to totally

eliminate the substantial number of dissenting shareholders so that the Fender's holding company would then be able to acquire in excess of 80% of First National I's stock, thereby avoiding tax liability on the exchange. In fact, the reverse triangular merger concept allows the controlling shareholders of an existing bank to shut out a sizable number of dissenting shareholders in a relatively easy manner.

As soon as the controlling shareholders gain influence over a simple majority of the existing bank's board of directors, they can have these directors apply for approval of a holding company, charter the interim bank merger partner, and agree to the plan of consolidation and submit it to the shareholders for a vote. By having control over this simple majority of directors, the controlling shareholders can attain 100% of the existing bank's stock by mustering only a two-thirds vote in favor of the consolidation among the shareholders. It is easy to see why this type of merger is highly preferable to the tender offer method of acquisition which does not guarantee 100% ownership of the existing bank stock and also allows a minority contingent of at least 20% of the shareholders to effectively block the acquisition.

To implement the reverse triangular merger, the Fender interests' directors applied to the Federal Reserve Board for prior approval of the formation of a bank holding company as required by 12 U.S.C. § 1842(a). On July 20, 1981, the Fender directors formed a Texas corporation, Kilgore First Bancorp, Inc. (Bancorp) for the express purpose of acquiring and holding all the outstanding stock of the surviving bank. The Federal Reserve Bank of Dallas approved Bancorp's application to become a bank holding company on January 19, 1982. The Fender directors then

secured a charter for the interim bank, New Kilgore First State Bank (First State), from the Commissioner of the Texas Banking Department on May 18, 1982. As explained earlier, First State was formed to serve the interim function of a controlled subsidiary needed by Bancorp to execute the reverse triangular merger. Once these preliminaries were accomplished, a majority of the directors presented the Fender interests' plan of consolidation to the shareholders of First National I on September 30, 1982. The consolidation plan was presented to the shareholders in the form of a proxy statement accompanied by a prospectus on Bancorp. A special shareholders meeting was called for October 22, 1982 in order that a vote on the plan of consolidation could be taken.

Petitioners voted against the consolidation at the October 22 meeting, thereby becoming dissenting shareholders within the provisions of 12 U.S.C. § 215 (b)-(d) which governs the consolidation of national and state banks. Pursuant to section 215(d), the Comptroller, on March 16, 1983, gave notice of his intention to cause an appraisal of the shares of First National I held by Petitioners. These parties were later paid the appraised value of their First National I stock which was $279.69 per share. Bancorp subsequently scheduled a public auction of its stock in an attempt to comply with the second potential payment requirement of section 215(d).

Prior to the auction date, Petitioners filed suit against Bancorp and the surviving bank, Kilgore First National Bank (First National II), in the United States District Court for the Eastern District of Texas seeking, *inter alia*, a temporary restraining order and a preliminary injunction to stop the scheduled auction of Bancorp stock based on their contention that Section 215(d) required the auction of First National II stock and not Bancorp stock.

The district court granted the temporary restraining order against the auction on July 26, 1983. However, the district court later denied Petitioners' preliminary injunction and dissolved the temporary restraining order. The denial of the injunction was appealed by Petitioners to the United States Court of Appeals for the Fifth Circuit. (Fifth Circuit). Petitioners later moved for a partial summary judgment on their claim that Section 215(d) required the auction of First National II stock instead of Bancorp stock. The district court certified to the Fifth Circuit its subsequent denial of that motion. Petitioners filed an appeal based on that certification which was accepted by the Fifth Circuit. Petitioners' appeal of the denial of the preliminary injunction and their appeal of the denial of the partial summary judgment were later consolidated by the Fifth Circuit.

The Fifth Circuit handed down its decision on the consolidated appeals on December 7, 1984. The Fifth Circuit held that 12 U.S.C. § 215(d) would be satisfied by the auction of Bancorp stock. Petitioners timely filed a Motion for Rehearing of this decision which was denied by the Fifth Circuit on January 7, 1985. Petitioners now respectfully pray that this Honorable Court issue a Writ of Certiorari to review the December 7, 1984 Judgment and Opinion of the Fifth Circuit based upon the following authorities.

REASON FOR GRANTING CERTIORARI

In setting forth the following argument in support of issuance of a Writ of Certiorari, Petitioners are mindful that a review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore. With

this in keeping, Petitioners will emphasize their belief that the Fifth Circuit's construction of the auction provisions of 12 U.S.C. § 215(d) has incorrectly decided an important question of federal law which has not been, but should be, corrected and settled by this Court. The following argument will amplify this important United States Supreme Court Rule 17.1(c) review governing consideration.

ARGUMENT

It is the contention of Petitioners that the auction provisions of 12 U.S.C. § 215(d) may only be lawfully satisfied by the auction of stock of a national banking association and that the attempt by Respondents to instead auction stock of a holding company incorporated under state law does not and cannot comply with either the express statutory language of section 215(d) or the intent of Congress.

Section 215 of Title 12 of the United States Code provides the statutory authority for the consolidation of national or state banks with one or more national banks under a national bank charter. Subsection (a) of 215 requires an agreement to consolidate by a majority of the board of directors of each bank that is a party to the consolidation proposal and a subsequent ratification of this agreement by at least two-thirds of the shareholders of each affected bank and final approval of the consolidation by the Comptroller. Subsection (b) of 215 then goes on to state that any shareholder who voted against the plan of consolidation which has been duly approved by the necessary majorities of shareholders and the Comptroller, or any shareholder who had given prior written notice of his dissent from said plan of consolidation shall be entitled to receive the value of the shares he holds as of the date

of the consolidation if a written request is made to the consolidated association within thirty days from the date of the consummation of the consolidation. Subsection (c) of 215 sets up a three-person committee to ascertain the value of the shares held by any dissenting shareholder. If within ninety days from the date of consolidation the appraisal committee provided for by subsection (c) has either not been selected or, if selected, not ascertained a value for dissenting shareholders' stock, subsection (d) of 215 states that the Comptroller shall then cause an appraisal to be made which shall be final and binding on all parties. Section 215(d) then provides that,

> [T]he value of the shares ascertained [by the Comptroller's appraisal] shall be promptly paid to the dissenting shareholder by the *consolidated banking association.* Within thirty (30) days after payment has been made to all dissenting shareholders as provided for in this section, the shares of stock of the *consolidated banking association* which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the *consolidated banking association* at an advertised public auction.....and the *consolidated banking association* shall have the right to purchase any such shares at such public auction, if it is the highest bidder therefore, for the purpose of reselling such shares within thirty (30) days thereafter....

12 U.S.C. § 215(d) (emphasis added). If the public auction just mentioned occurs and the shares are sold at a price greater than the amount paid to the dissenting shareholders, the excess in such sale price shall be paid to such dissenting shareholder.

As is evident from a reading of the Statement Of The

Case previously set forth in this application, as well as the fact findings of the district and appellate courts upon which the case statement was predicated; Respondents have met all necessary § 215 prerequisites to the acquisition of First National I by Bancorp. Moreover, Petitioners have taken all steps required to preserve their rights as dissenting shareholders from the plan of consolidation. As such, and as the District Court so concluded, the "auction" provisions of § 215(d), the final step contemplated in the consolidation procedure, is now properly amenable to analysis and examination by this Court. *See* Appendix C.

As can be easily observed, section 215 of Title 12 is replete with references to "consolidated banking associations". A literal reading of section 215, coupled with a review of its legislative history and a comparison with its companion statute, 12 U.S.C. § 215a, must necessarily lead this Court to the conclusion that "consolidated banking association", as used in the context of the auction provision of section 215(d), can only refer to First National II and not Bancorp.

Throughout the national banking laws, the term "banking association" clearly refers to a national bank. For example, 12 U.S.C. § 215 provides for the consolidation of national banks or state banks with national banks. Subsection (a) provides, "[a]ny national banking association or any bank incorporated under the laws of any State may...be consolidated with one or more national banking associations...under the charter of a national banking association on such terms and conditions....ratified and confirmed by the affirmative vote of shareholders of each such association or bank...." Throughout the statute a state bank is referred to as a bank, while a national bank is referred to as a national banking association or simply as an

association. Subsection (b) of 12 U.S.C. § 215 provides for the liabilities of the two consolidating banks. The statute provides that the consolidated association shall be liable for all liabilities of the consolidating banks or associations and that the capital stock of the consolidated association shall not be less than that required for the organization of a national bank in the place where it is located. It is clear from a reading of this section that "consolidated association" refers to the national bank which results from a consolidation of two separate banks under section 215. It would be totally inconsistent with the clear meaning of the statute to hold, that in subsection (d) the term "consolidated banking association" refers to something other than the national bank which results from the consolidation of two banks under 12 U.S.C. § 215.

Petitioners would further point out to this Court that 12 U.S.C. § 215 was approved in its present form on September 8, 1959. The statute contains a requirement that the stock of the consolidated banking association be sold at a public auction. In light of the Securities Act of 1933, it is highly unlikely that a national banking law would be enacted which requires that stock be sold at a public auction, if the stock which was to be sold was not bank stock exempt from the registration provisions of the Securities Act of 1933. If the stock which is to be sold is the stock of a business corporation, such as a bank holding company, that stock must be registered before it can be offered at a public auction. The expenses of registering the stock would typically far exceed any amount which could be received from the public auction of the stock. It would be illogical to mandate a public auction of stock, except in rare circumstances, if the stock would first have to be registered under the Securities Act of 1933. Therefore, the only logical conclusion is that the framers of 12 U.S.C. §

215 were requiring that the stock of a bank, exempt from registration, would be sold at a public aucation.

Further buttressing this point is the explicit permission given to the consolidated banking association in section 215(d) to purchase the stock at the public auction, if it is the highest bidder, for the purpose of reselling such stock. Such provision is meaningless if the stock which is to be sold and bid on by the selling organization is the stock of a business corporation. A business corporation would need no permission to purchase its own shares at a public auction if it were the highest bidder, nor should it be required to then resell the shares in a private sale. However, national banking associations are prohibited by the provisions of 12 U.S.C. § 83 from purchasing or holding shares of their capital stock, unless the purchase was necessary to prevent a loss upon a debt previously contracted in good faith. Furthermore, 12 U.S.C. § 83 provides that any stock so acquired shall be sold at a public or private sale within six months. Therefore, a national banking association requires explicit statutory authority to purchase shares of its own stock, which explicit statutory authority is granted to the consolidated banking association in 12 U.S.C. § 215. The requirement under section 215 that the purchased stock be subsequently sold is consistent with the prohibition against national banks owning shares of its own stock.

Title 12 of United States Code § 215, which provides for consolidation, has a companion statute in 12 U.S.C. § 215a, which provides for the merger, rather than the consolidation, of national banks or state banks into national banks. Subsection (d) of section 215a provides the same rights, with some minor differences, to dissenting shareholders of a bank which has merged into another bank as 12 U.S.C. § 215(d) provides Petitioners. In particular,

section 215a(d) states: "[t]he shares of stock of the receiving association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the receiving association at an advertised public auction...." The term "receiving association" is defined in 12 U.S.C. § 215b, Definitions, which provides in part, "[a]s used in [sections 215-215(b) of this Title], the term...'Receiving Association' means the national banking association into which one or more national banking associations or one or more State banks, located within the same State, merge." Apparently, 12 U.S.C. § 215b the definition statute, was intended to cover both the consolidation and merger provisions. However, because of the different terminology used in consolidation rather than merger, the definition of receiving association is not as clearly applicable to the consolidation statute as it is to the merger statute. However, as applied to the merger statute, there is no doubt that the stock that is to be sold is the stock of the bank which survives the merger and not the stock of any other entity.

The statutory rights and protections afforded dissenting shareholders under section 215, the consolidation statute, and section 215a, the merger statute, are substantially identical. The Fifth Circuit considered the question of whether the two statutes provided different rights to dissenting shareholders in *Ellis v. State National Bank of Alabama*, 434 F.2d 1182 (5th Cir. 1970). The court in *Ellis* held that 12 U.S.C. § 215a, which was passed at the next Congressional term after section 215, was intended to provide for state to national bank mergers, and not to provide different rights to shareholders who dissented from a merger rather than a consolidation. *Id.* at 1188.

The legislative history of 12 U.S.C. § 215 also

indicates that the stock which is to be sold is the stock of a national bank. A statute providing for the consolidation of national banking associations was originally enacted on November 7, 1918, and was thereafter formally classified to 12 U.S.C. §§ 33-34c. These sections were amended and reclassified in 1959 to 12 U.S.C. §§215-215b. Former § 34a which provided for consolidation of state banks and national banks, stated in part, in the section dealing with the rights of dissenting shareholders, that after the appraisal the appraised value should be paid to the shareholders by the consolidated association, and "...the shares so paid for shall be surrendered and, after due notice, sold at a public auction within thirty (30) days after the final appraisement provided for in this section; and if the shares so sold at the public auction shall be sold at a price greater than the final appraised value, the excess in such sale price shall be paid to the said shareholder..." The former consolidation statute thus clearly required that the shares of a national banking association be sold at a public auction. Amendment and reclassification of the former merger and consolidation statutes to 12 U.S.C. § 215 *et seq.* is discussed in the 1959 United States Congressional and Administrative News at page 2237. The discussion notes that the amendments are proposed "...in order to make uniform the provisions relating to these consolidations and mergers and to eliminate certain ambiguities." The discussion regarding the Congressional intent of these statutes goes on to list the substantive changes made when 12 U.S.C. § 33 *et seq.* was amended and reclassified to the current statutes. The discussion states: "It [the amending act] would eliminate differences in the legal requirements for publication, the requirements of notice of shareholders' meeting, the waiving of such notice, the procedure to be followed in determining dissenters' rights, and the payment for the expense of appraisal or reappraisal made by the Comptroller. It would

also eliminate existing ambiguities as to the length of time a dissenting shareholder may delay before proceeding with an appraisal, the time within which a dissenter's stock must be surrendered, the length of time which must elapse before the Comptroller can be asked to make a reappraisal, and the disposition of the stock of dissenters."

"The amendments contained in Section 20 of the bill were intended only to improve the procedural and technical provisions relating to consolidations and mergers. The committee did not intend to affect in any way the substantive authority of banks to consolidate or merge, or the authority of the Comptroller to review and approve such consolidations and mergers." It is clear from this discussion that Congress, in enacting the current 12 U.S.C. § 215, did not intend to change a provision as important and as central to the statutory scheme as that providing for the sale of stock of the Bank held by dissenting shareholders. The discussion lists in detail minor changes made in the statute, but nowhere does it imply that the stock which is to be sold at public auction is now the stock of an unregulated business corporation rather than the stock of a national banking association.

Both the Fifth Circuit and the district court ignored Congress' clear and unambiguous use of the term "consolidated banking association" in section 215(d) and instead chose to focus on the protion of section 215(d) stating that "shares of stock...which would have been delivered to such dissenting shareholders had they not requested payment...." Placing heavy emphasis on this phrase, the Fifth Circuit, in effect, based its holding in favor of Respondents upon the fact that shareholders agreeing to the consolidation of First National I and First State ultimately received Bancorp stock. However, it is the position of Petitioners

that what is relevant to the proper resolution of the question before this Court is not what stock shareholders agreeing to the consolidation received at the conclusion of the entire reorganization, but what stock dissenting shareholders should have received based upon their opposition to the consolidation of First National I and State Bank.

The ultimate goal of the Fender interests' reorganization effort was to change First National I's ownership from that of individual shareholders to that of a bank holding company. As mentioned in the Statement of the Case, the Fender interests could not acquire the needed 80% of First National I's stock by a direct tender offer. The only way to effectively neutralize this large bloc of opposition to holding company ownership of First National I was to consolidate it with another bank. Ironically, this meant that in order for the Fender interests to own First National I through their holding company, they had to destroy First National I and create First National II. This is why Bancorp now owns 100% of the stock of an entirely new entity (First National II) and not the old entity (First National I).

Petitioners vehemently opposed the erasure of the legal identity of First National I resulting from its consolidation with a sham bank incorporated solely for that purpose by the Fender interests. Petitioners did not want to give up their shares in First National I for shares in First National II. However, when the shareholders meeting was called and the votes were counted, the necessary two-thirds majority agreed to turn First National I into First National II. As dissenters to this consolidation, Petitioners were entitled to the appraised value of their First National I stock and to the excess over and above this value generated by a public auction of the stock in the new consolidated entity (First National II). Entitlement to these basic dissenters'

rights was not something conjured up by Petitioners, but was plainly due them based upon a simple reading of section 215(d).

After the consolidation phase was completed, the shareholders of First National II (the nondissenters) then received stock in Bancorp as payment for their interest in First National II. The exchange phase of the reorganization was a matter strictly between the nondissenting shareholders, who now owned First National II, and Bancorp. Petitioners had already taken themselves out of this part of the reorganization due to their opposition to the first step of the reorganization. Therefore, the stock of the consolidated banking association Petitioners would have, or should have, received but for their dissent was First National II stock. Respondents attempt to auction Bancorp stock in lieu of First National II stock is therefore in clear violation of 12 U.S.C. § 215(d).

In answer to these arguments the Fifth Circuit stated, "[w]e reject [Petitioners'] request to characterize the reorganization as a two-step transaction. The Agreement and Plan of Consolidation clearly provides one step: the exchange of First National I stock for Bancorp shares." *Martin v. Kilgore First Bancorp, Inc.*, 747 F.2d 1024, 1027 (5th Cir. 1984) (also Appendix B). By reason of this statement, Petitioners believe the Fifth Circuit missed the point of their argument, *i.e.*, Petitioners are not arguing Respondents' written plan of reorganization called for a two-step procedure, in fact Respondents, knowing they would have to pay Petitioners' the full and fair value of their stock if the proper two-step procedure was followed, deliberately and intentionally attempted to draft its reorganization plan so as to eliminate the initial consolidation step. Petitioners do not misapprehend either the terms

of Respondents' reorganization or their motivation in drafting the plan to suit the Fender interests. Petitioners are urging, however, that Respondents' one-step plan of reorganization is invalid because it attempts to inject a nonbanking business corporation (Bancorp) into a statute (section 215) where it has no place.

The Fifth Circuit erred in its assumption that Respondents are entitled to subvert the purposes of section 215(d) by converting what is conceptually, and properly, a two-step procedure into a one-step procedure through the use of a reverse triangular merger. The initial consolidation and the subsequent exchange of holding company stock for the stock of the newly consolidated entity are two entirely different transactions. They are separate and distinct undertakings and this Court should not allow Respondents to say the magic words "reverse triangular merger" and turn a clear two-step procedure into a single transaction. Whatever usefulness the reverse triangular merger method of acquisition may have in standard business practice, it should have no application in consolidations involving national banking associations because it deprives dissenting shareholders of rights guaranteed to them by section 215(d).

The Fifth Circuit held that the "language of section 215(d) is ambiguous, if not internally contradictory, when applied to a reverse triangular merger." *Id.* (also Appendix B). However, the language and intent of section 215(d) are clear and unambiguous when the statute is used in the way Congress intended it to be used, that is, when it is applied strictly to bank consolidations. It is easy to raise ambiguities and inconsistencies in section 215(d) when a nonbanking business corporation is wrongly thrust into a role that is properly to be occupied by a banking association

that has been newly formed as a result of the previous consolidation of two separate banking entities. The Fifth Circuit traces its notion that section 215(d) is ambiguous to the fact that Congress has not further modified the statute to accommodate newly developed merger mechanisms such as reverse triangular mergers. By this reasoning, the Fifth Circuit admits that section 215(d) was unambiguous when it was last considered by Congress in 1959, but that it has since been made ambiguous because parties have, through newly concocted merger procedures, tried to utilize the statute in situations not contemplated by Congress. This type of reasoning should not be condoned by this Court. An unambiguous statute should not be used for purposes for which it was not intended and then declared "ambiguous" in the context of that improper use. Section 215(d) is not ambiguous; it clearly calls for the auction of First National II stock in this instance.

The Fifth Circuit also pointed out that "[t]he Comptroller, who appeared *amicus curiae* during the district court proceedings and on appeal, urges the adoption of the construction [of section 215] advanced by [Respondents]." *Id.* (also Appendix B). The Fifth Circuit, and it appears the district court, accorded "substantial deference" to the Comptroller's interpretation of section 215(d). As to the Comptroller's position in this lawsuit, Petitioners would point out two matters for the Court's consideration. First, the Comptroller knows that if Bancorp stock is auctioned, as opposed to First National II stock, there will be no further payments that will have to be made to Petitioners because an auction of that stock will not generate any excess over the appraised value of their First National I stock. The reason for this is Respondents' candid admission in the Bancorp prospectus that there is no market for Bancorp stock. "There is currently no market for the

securities of [Bancorp] and it is unlikely that a market will develop as a result of this offering. Therefore, shareholders may not be able to readily liquidate these securities in case of a personal financial emergency or otherwise." Appendix D. "As previously discussed, there is currently no public trading market for the securities of [Bancorp] and it is unlikely that a market will develop as a result of this offering." Appendix D—A-51. Because Bancorp will not have to disgorge substantial payments to compensate the dissenting shareholders for the inevitable excess over appraised value that would be generated by an auction of First National II stock, Bancorp will be in a more financially stable condition because the monies rightly belonging to Petitioners will be retained by Bancorp. The Comptroller is interested in the financial soundness of the institutions he supervises and it is to be expected that he will interpret a statute in such manner as to preserve that goal.

Second, the Comptroller would be put in an embarrassing position if he agreed with Petitioners. By the Comptroller's own estimate, it appears that he processed approximately 150 interim bank merger applications per year throughout the 1970's and in 1982 he processed 183 such applications, and 194 in 1983. To now agree with petitioners that section 215(d) requires the auction of the stock of the consolidated banking association instead of the holding company would mean that the Comptroller would have admitted that the many previous mergers he approved that provided for auction of holding company stock would have been in violation of federal law. It is easy to see why the Comptroller would not want to admit an error of this magnitude at this point in time and, therefore, why he joins the Respondents' position, which is essentially, "everybody else has been doing it this way so that makes it right." This type of justification for violations of the law

have never merited an ounce of serious consideration by any court of law and never will. Petitioners have called attention to a serious breach of federal banking law and the Comptroller, the district court, and the Fifth Circuit have all passed the buck on this fact. This Court should stop the buck and declare that Respondents' proposed plan of reorganization is in conflict with the express provisions of section 215(d).

The last issue to be addressed is the so-called "windfall" Petitioners will receive if First National II stock is auctioned. As correctly stated by the Fifth Circuit, "[s]ection 215(d) was enacted to protect the dissenting shareholders in a consolidation involving a national bank by providing a means whereby the dissenters would receive full value for their stock." *Id.* (citing *Central-Penn National Bank v. Portner,* 201 F.2d 607, 609 (3d Cir. 1953). The Comptroller and the Fifth Circuit have taken the position that the Comptroller's appraisal of the dissenters' stock is the only step necessary to protect their right to be paid the full value of their stock. Apparently, the Fifth Circuit believes that the auction provision of section 215(d) plays no part in guaranteeing that Petitioners receive full value for their stock; in its opinion the auction provision is only designed to secure to the dissenters the same economic benefits as the nondissenters realize from the consolidation transaction. The only problem with this position is deciding which nondissenters benefits are to be considered.

The nondissenting shares controlled by the Fender interests (approximately 63% of First National I stock) received almost total control over First National II through its holding company, preferential treatment for its acquisition debt as well as the other tax advantages; all at the expense of the minority shareholders. The

nondissenters from the plan of reorganization who were not aligned with the Fender interests (approximately 13% of the First National I stockholders) receive a 12% subordinated debenture and a share of holding company stock with no reliable market value. Which economic "benefit" are the dissenters to the consolidation (approximately 25% of the First National I stockholders) to receive? Respondents would certainly not say Petitioners should receive the benefits enjoyed by the Fender interests nondissenters, but if they are instead entitled to the non-Fender interests shareholders "benefit", an unjust result would follow. Petitioners would get the "benefit" of an auction of stock with no market, at least non-Fender Bancorp shareholders might be able to hold their stock until such time, if ever, a market develops for the stock. Petitioners would not have this choice since "their" Bancorp stock would be subject to immediate auction. This illustrates the unfair position Petitioners would be put in if the Fifth Circuit's erroneous construction of section 215(d) is allowed to stand. The real windfall in this whole reorganization is being enjoyed by the Fender interests. To suggest that Petitioners will be reaping a windfall by merely asking for and receiving their statutorily secured right to be paid the full value for their stock is disengenious at best.

CONCLUSION

Respondents, based on their interpretation of 12 U.S.C. § 215(d), would have the Court approve an auction of apples to arrive at the fair value of oranges. The fact that the apples are rotten (no market) apples only exacerbates the inequity. It cannot be the intent of Congress to allow a thin majority of bank shareholders to run roughshod over a group of minority stockholders. If this Petition is denied and the Fifth Circuit decision is allowed to remain

uncorrected, this is exactly the result this Court will be endorsing. The Court should exercise its discretion in favor of granting a Writ of Certiorari to the Fifth Circuit Court of Appeals in this matter in order to decide the question of which entity's stock must be auctioned to satisfy the requirements of 12 U.S.C. § 215(d). Petitioners earnestly believe this important question of federal law should be reviewed and settled by this Honorable Court and it is for this reason that Petitioners respectfully pray for issuance of a Writ of Certiorari from this Court to the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

CHARLES H. CLARK
P. O. Box 98
Tyler, Texas 75710

Charles H. Clark
Bar I.D. No. 04274000
Telephone: 214/593-2514

Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that three (3) true and correct copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit has been served upon Respondents by depositing said Petition in a United States post office, with first-class postage prepaid, addressed to Respondents' counsel of record, Richard Grainger, Esq., P.O. Box 491, Tyler, Texas 75710 and Beth Fielding Siever, P.O. Box 2241, Austin, Texas 78768.

All parties required to be served have been served.

_____

Charles H. Clark

APPENDIX "A"

CONSOLIDATION AND MERGER

§215. Consolidations under national charter

(a) Approval of Comptroller, board and shareholders; terms and conditions; notice. Any national banking association or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national banking associations located in the same State under the charter of a national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the case of such State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or bank is located, or, if there is no such newspaper, then in the paper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank.

(b) Liability of consolidated association; capital stock; dissenting shareholders. The consolidated association shall be liable for all liabilities of the respective consolidating banks or associations. The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national bank in the place in which it is located: Provided, That if such consolidation shall be voted for at such meetings by the necessary majorities of the shareholders of each association and State bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller, any shareholder of any associations or State banks so consolidated who has voted against such consolidation at the meeting of the association or bank of which he is a stockholder, or who has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him when such consolidation is approved by the Comptroller upon written request made to the consolidated association at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates.

(c) Valuation of shares. The value of the shares of any dissenting shareholder shall be ascertained, as of the effective date of the consolidation, by an appraisal made by a committee of three persons, composed of (1) one selected by the vote of the holders of the majority of the stock, the owners of which are entitled to payment in cash; (2) one selected by the directors of the consolidated banking association; and (3) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment,

that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to the value of the shares of the appellant.

(d) Appraisal by Comptroller; expenses of consolidated association; sale and resale of shares; State appraisal and consolidation law. If, within ninety days from the date of consummation of the consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the consolidated banking association. The value of the shares ascertained shall be promptly paid to the dissenting shareholders by the consolidated banking association. Within thirty days after payment has been made to all dissenting shareholders as provided for in this section the shares of stock of the consolidated banking association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the consolidated banking association at an advertised public auction, unless some other method of sale is approved by the Comptroller, and the consolidated banking association shall have the right to purchase any of such shares at such public auction, if it is the highest bidder therefor, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price not less than par as its board of directors by resolution may determine. If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders the excess in such sale

price shall be paid to such shareholders. The appraisal of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases, rather than as provided in this section, if such provision is made in the State law; and no such consolidation shall be in contravention of the law of the state under which such bank is incorporated.

(e) Status of consolidated association; property rights and interests vested and held as fiduciary. The corporate existence of each of the consolidating banks or banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and such consolidated national banking association shall be deemed to be the same corporation as each bank or banking association participating in the consolidation. All rights, franchises, and interests of the individual consolidating banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the consolidated national banking association by virtue of such consolidation without any deed or other transfer. The consolidated national banking association, upon the consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and committee of estates of lunatics, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the consolidating banks or banking associations at the time of consolidation, subject to the conditions hereinafter provided.

(f) Removal as fiduciary; discrimination. Where any consolidating bank or banking association, at the time of the consolidation, was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or committee of estates of lunatics, or in any other fiduciary capacity, the consolidated national banking association shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was such consolidating bank or banking association prior to the consolidation. Nothing contained in this section shall be considered to impair in any manner the right of any court to remove the consolidated national banking association and to appoint in lieu thereof a substitute trustee, executor, or other fiduciary, except that such right shall not be exercised in such manner as to discriminate against national banking associations, nor shall any consolidated national banking association be removed solely because of the fact that it is a national banking association.

(g) Issuance of stock by consolidated association; preemptive rights. Stock of the consolidated national banking association may be issued as provided by the terms of the consolidation agreement, free from any preemptive rights of the shareholders of the respective consolidating banks. (Nov. 7, 1918, c. 209, § 1, as added Sept. 8, 1959, P.L. 86-230, § 20, 73 Stat. 460.)

APPENDIX "B"

R.S. MARTIN, Jr.,

Plaintiff-Appellant,

v.

KILGORE FIRST BANCORP, INC. and Kilgore First National Bank,

Defendants-Appellees.

Nos. 83-2662, 84-2199

United States Court of Appeals,
Fifth Circuit.

Dec. 7, 1984.

Dissenting minority shareholders in bank absorbed in reverse triangular merger moved for partial summary judgment on claim that statute protecting rights of dissenting shareholders in a bank consolidation required auction of surviving bank's stock instead of shares in bank holding company chartered under state law. The United States District Court for the Eastern District of Texas, William M. Steger, J., entered order denying motion, and certified question for interlocutory appeal. The Court of Appeals, Clark, Chief Judge, held that statute dealing with rights of dissenting stockholders in a consolidation involving a national bank did not require auction of stock of surviving bank in reverse triangular merger; rather, demands of statute were satisfied by auction of stock in bank holding company chartered under state law.

Affirmed.

Appeals from the United States District Court for the Eastern District of Texas.

Before CLARK, Chief Judge, JOHNSON, and WILLIAMS, Circuit Judges.

CLARK, Chief Judge:

Plaintiffs seek review of rulings of the district court (i) refusing to enjoin the sale of bank holding company stock to satisfy the requirements of 12 U.S.C. § 215(d), and (ii) denying a motion for summary judgment on their claim that the same section requires the auction of stock in a national banking association, rather than stock in a bank holding company chartered under state law. The district court certified the second question for interlocutory appeal as a controlling question of law pursuant to 28 U.S.C. § 1292(b).

We find that in the type of transaction at issue here the demands of section 215(d) are satisfied by the auction of stock in the bank holding company and affirm the district court.

I

Plaintiffs were minority shareholders in Kilgore First National Bank (First National I). Sometime in 1980 or 1981 a majority of the board of directors of First National I decided to convert the bank's ownership from individual shareholders to a bank holding company. A reverse triangular merger was chosen to achieve the conversion. This type of merger has three phases; (1) the principals of an existing bank establish a bank holding company; (2) these same principals then apply to the appropriate authorities to charter an interim bank which is owned wholly by the holding company; and (3) the

directors of both the original bank and the interim bank agree to merge or consolidate the two banks, subject to the approval of the Comptroller of the Currency (Comptroller), thereby forming the surviving bank. In this type of merger or consolidation agreement, shareholders of the existing bank exchange their shares for shares in the holding company.

Dissenting shareholders of the existing bank are entitled to the protections afforded by 12 U.S.C. § 215(d); they must be paid the appraised value of the shares they formerly owned and receive any excess over that value generated by an auction of the shares of the consolidated banking association which they would have received but for their dissent. The nondissenting shareholders of the original bank become the owners of all stock in the holding company, which in turn owns all of the stock of the survivng bank.

The board of First National I chose the reverse triangular merger method of changing ownership because of the tax advantages it offered. If the holding company acquired at least 80% of the stock in the surviving bank, the exchange would be tax free. Because 25% of the shareholders in First National I indicated they would dissent from the consolidation plan; the exchange would have been fully taxable if a traditional tender offer had been used. The reverse triangular merger enabled the board to eliminate the dissenters so that the bank holding company would be able to acquire all the stock in the surviving bank, and avoid any tax liability on the exchange for the shareholders.

To implement the reverse triangular merger, a majority of the directors applied to the Federal Reserve Board

for prior approval of the formation of a bank holding company. On July 20, 1981 these same directors formed a Texas corporation, Kilgore First Bancorp, Inc. (Bancorp) for the express purpose of acquiring and holding all the outstanding stock of the surviving bank. The directors then secured a charter for an interim or "phantom" bank, New Kilgore First State Bank (First State), from the Commissioner of the Texas Banking Department on May 18, 1982. First State was formed only to serve the interim function of a controlled subsidiary needed to execute the reverse triangular merger. The Federal Reserve Bank of Dallas approved Bancorp's application to become a bank holding company on January 19, 1982.

The directors presented their plan of consolidation to the shareholders of First National I in a proxy statement that was accompanied by a prospectus of Bancorp on September 30, 1982. The Federal Deposit Insurance Corporation and the Comptroller approved the consolidation five days later.

Plaintiffs voted against the consolidation at the October 22 meeting, thereby becoming dissenting shareholders within the provisions of 12 U.S.C. §215(b)-(d), which governs the consolidation of national or state banks with national banks. On March 16, 1983 the Comptroller, pursuant to section 215(d), gave notice of his intent to cause an appraisal of the shares of First National I held by the dissenters. These individuals were later paid the appraised value of their First National I stock which was $279.69 per share. Bancorp subsequently scheduled a public auction of its stock to comply with the second potential payment requirement of section 215(d).

Prior to the auction date plaintiffs filed suit against

Bancorp and the surviving bank, Kilgore First National Bank (First National II), challenging the results of the Comptroller's appraisal, as well as the propriety of his action in making the appraisal at all. They also sought a temporary restraining order and a preliminary injunction to stop the scheduled auction of Bancorp stock, contending that section 215(d) required the auction of First National II stock.

The district court granted the temporary restraining order against the auction on July 26, 1983, but on November 22, 1983, the court denied the requested preliminary injunction and dissolved the temporary restraining order. Plaintiffs appealed that order to this court.

Bancorp chose not to proceed with the sale. Plaintiffs later moved for partial summary judgment on their claim that section 215(d) required the auction of First National II stock instead of Bancorp shares. The district court certified to this court its denial of the motion. Plaintiff filed this appeal based on that certification which we have accepted. 28 U.S.C. § 1292(b).

II

The only issue before us is the application of the following portion of 12 U.S.C. § 215(d) to the consolidation described in Part I of this opinion.

> Within thirty days after payment has been made to all dissenting shareholders as provided for in this section the shares of stock of the consolidated banking association which would have been delivered to such dissenting shareholders

> had they not requested payment shall be sold by the consolidated banking association at an advertised public auction....If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders the excess in such sale price shall be paid to such shareholders.

Our resolution of this question necessarily will dispose of plaintiffs' appeal from the denial of their request for a preliminary injunction against the sale of Bancorp stock.

A

Plaintiffs maintain that the reorganization should be viewed as involving two steps: (1) the consolidation of First National I and First Bank into First National II and (2) the exchange of First National II shares for Bancorp shares. They insist that they dissented to the first step, the consolidation. Bancorp was not involved in this part of the transaction. According to their argument, if the plaintiffs had not dissented at this point, they would have received shares in the surviving bank, First National II, not Bancorp. Therefore, section 215(d) requires the auction of First National II shares, not stock in Bancorp. Moreover, they contend, the statute requires auction of the shares of a national "consolidated banking association." Bancorp, they point out, is a Texas corporation, not a national banking association.

Defendants reply that the reorganization, as set forth in the Agreement and Plan of Consolidation approved by the majority of shareholders in First National I and by the Comptroller, was a one-step transaction: shareholders of First National I tendered their stock in exchange for Bancorp shares. They admit that Bancorp is not a national

banking association as described in the statute, but urge us to focus instead on the later phrases "[shares] which would have been delivered to such dissenting shareholders had they not requested payment...." Those shareholders who did not dissent to this transaction received Bancorp shares.

There is no basis in fact for plaintiffs' claim that they would have received First National II stock but for their dissent. No shares in First National II were ever issued. Ordering the issuance and auction of First National II stock would not only ignore the realities of the transaction legally chosen by the majority stockholders, but would also defeat section 215's purpose. That purpose is to ensure that dissenters realize the same economic benefits as non-dissenters. Restructuring the real transaction could give dissenters a windfall since stock in the surviving bank may often be more valuable than holding company stock. Defendants claim it is here.

The Comptroller, who appeared *amicus curiae* during the district court proceedings and on appeal, urges the adoption of the construction advanced by defendants.

B

We reject plaintiffs' request to characterize the reorganization as a two-step transaction. The Agreement and Plan of Consolidation clearly provides one step: the exchange of First National I stock for Bancorp shares. Plaintiffs' argument would be feasible only if the agreement had provided for the exchange of First National I shares for those of First National II and then a separate exchange of the First National II shares for Bancorp stock.

Undeniably, the plain language of section 215(d) is

ambiguous, if not internally contradictory, when applied to a reverse triangular merger. As plaintiffs point out, the statute requires auction of the stock of a consolidated national banking association and Bancorp is not such an organization. Defendants, however, are equally correct in their assertion that the statute requires auction of the shares the dissenters would have received if they had not dissented. In this case plaintiffs would have received Bancorp stock as did the shareholders who did not dissent. Their claim that they would have received shares in First National II but for their dissent is without merit because no such shares were ever issued.

The ambiguity in the statute is the result of changes in the forms of entities now used to conduct banking business. Reverse triangular mergers, using an interim or "phantom" bank to transfer ownership of a national bank to a one-bank holding company, were not devised until the mid-1960's. Section 215(d) was enacted in 1918 and last amended in 1959. Congress has not further modified the statute to accommodate newly developed merger mechanisms such as that presented here despite the fact that the Comptroller and the Federal Reserve System have consistently recognized the use of these new business forms and merger procedures.

C

Regardless of the age of the ambiguity, our duty is to interpret the words of the statute to further the purpose Congress sought to accomplish by its enactment. *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 103 S.Ct. 986, 994, 74 L.Ed.2d 845 (1983); *WTWV, Inc. v. National Football League*, 678 F.2d 142, 143 (11th Cir.1982). Because the Comptroller has the primary responsibility for

regulating consolidations involving national banks, we will accord substantial deference to his interpretation of section 215(d) where it represents a reasonable construction of the language and is consistent with the legislative intent. *See Securities Industry Association v. Board of Governors*, __ U.S. __, 104 S.Ct. 2979, 2983, 82 L.Ed.2d 107 (1984).

Section 215(d) was enacted to protect the dissenting stockholders in a consolidation involving a national bank by providing a means whereby the dissenters would receive full value for their stock. *Central-Penn National Bank v. Portner*, 201 F.2d 607, 609 (3d Cir.1953) (citing H.R.Rep. No. 408, 65th Cong., 2d Sess. (1918); S.Rep. No. 406, 65th Cong., 2d Sess. (1918)). Congress intended to ensure that the dissenters would receive the same economic benefits as nondissenting shareholders.

The auction of Bancorp shares will place these plaintiffs in a position as nearly equal to that of the nondissenting shareholders as their dissent will permit. The nondissenters holding stock in First National I were never given the option of receiving First National II stock instead of Bancorp shares. If the dissenters are permitted to force the auction of First National II shares they could receive an economic return different from that realized by the nondissenters who could only own stock in a different concern. As the Comptroller notes, shares of First National II could be more valuable than Bancorp shares because individual ownership of some shares of First National II would give the owners disproportionate leverage in management. Such stock might also have a premium value because of its attractiveness to a multibank holding company seeking to take over First National II.

At oral argument plaintiffs contended that even if

the First National II shares are more valuable than the Bancorp shares received by the nondissenters, this does not represent a windfall to the dissenters. It only ensures they receive the full value of their First National I shares as intended by section 215(d). However, that is not the purpose of the auction provision. The appraisal process established in section 215(d) protects plaintiffs' right to receive the full value of their First National I shares. The adequacy of their compensation for those shares is a function of the appraisal process. That process should not be confused with the separate statutory requirement to auction the stock of Bancorp which was received by the nondissenters.

The auction step is designed to secure to the dissenters the same economic benefits as the nondissenters realize from the consolidation transaction. To allow plaintiffs to force the issuance and auction of stock to which the nondissenters did not have access could allow plaintiffs to realize a greater profit from the transaction than the nondissenters. This could destroy the parity intended by the statute.

Accepting plaintiffs' contention that the auction of First National II shares was required because Bancorp is not a consolidated national banking association would not advance the purposes of the statute. Such a construction would produce an unreasonable result which is "plainly at variance with the policy of the legislation as a whole...." *United States v. Mendoza*, 565 F.2d 1285, 1288-89, *modified on other grounds*, 581 F.2d 89 (5th Cir.1978) (en banc) (quoting *Perry v. Commerce Loan Co.*, 383 U.S. 392, 86 S.Ct. 852, 857, 15 L.Ed.2d 827 (1966)). The court would be required to order the issuance of First National II stock for the auction, despite the fact that the agreement did not

provide for the issuance of such stock. The reverse triangular merger plan adopted by the majority of the shareholders in First National I to convert the bank to holding company ownership while avoiding tax liabilities was a legitimate transaction. Ignoring it could give plaintiffs a windfall. We refuse to follow this course.

III

The legislative intent which produced section 215(d) is best served by construing its terms to require the auction of stock in the bank holding company and not of the surviving bank in a reverse triangular merger. The orders of the district court are

AFFIRMED.

APPENDIX "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

NO. TY-83-291-CA

R. S. MARTIN, JR.

VS.

KILGORE FIRST BANCORP, INC.
and KILGORE FIRST NATIONAL BANK

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled and numbered cause was filed by Plaintiff, R.S. Martin, Jr., on July 19, 1983, against Kilgore First Bancorp, Inc. and Kilgore First National Bank. Plaintiff by way of his first amended complaint sought from the Court, *inter alia*, a temporary restraining order enjoining the sale of certain bank stock scheduled for July 29, 1983. On July 26, 1983, the Court granted Plaintiff's application for a temporary restraining order and enjoined Defendants from auctioning the bank stock in question. A hearing on the preliminary injunction requested by Plaintiff was set for August 4, 1983. The Court, acting on the motion of Plaintiff, extended its temporary restraining order an additional ten days on August 3, 1983. The hearing on Plaintiff's application for preliminary injunction was rescheduled to August 15, 1983.

On August 15, counsel for both parties, in open court, agreed to extend the Court's temporary restraining order for a period of thirty days to allow additional time for further briefing of the legal issues raised by this lawsuit.

By agreed order dated August 18, 1983, the temporary restraining order was extended and the hearing on the preliminary injunction postponed until September 14, 1983. On September 14, the parties submitted a second agreed order to extend the Court's temporary restraining order to October 12, 1983, so that the Office of the Comptroller of the Currency (the Comptroller) could submit an *amicus curiae* brief for the Court's consideration prior to the preliminary injunction hearing.

The parties appeared before the Court on October 12, 1983, and announced that they were prepared to proceed. The Court queried the parties as to whether the controversy over the issuance, *vel non*, of a preliminary injunction in this cause was a dispute over legal issues and not the underlying material facts of the case. Counsel for both parties answered the Court in the affirmative. At that point the Court indicated that Plaintiff's application for a preliminary injunction would be denied. In conformity with Fed.R.Civ.P. 52(a) and in conformity with the Court's intent expressed on October 12, 1983, the Court makes the following findings of fact and conclusions of law in support of its Order entered this day denying Plaintiff's application for preliminary injunction in all respects. Any finding of fact which constitutes a conclusion of law shall be deemed a conclusion of law and any conclusion of law which is a finding of fact shall be deemed a finding of fact.

FINDINGS OF FACT

The following are facts gleaned by the Court from the pleadings, motions, exhibits, briefs and representations of counsel in this case.

Sometime in 1980 or 1981, a majority of the board of

directors of Defendant Kilgore First National Bank (KFNB) deemed it to be in the best interests of KFNB and its shareholders to convert from individual shareholder ownership of KFNB to holding company ownership. The board of directors determined that the change of ownership of KFNB could best be accomplished through the use of an acquisition vehicle known as a reverse triangular merger. This is a three party merger involving a parent company, a controlled subsidiary and a target company. The parent company forms a controlled subsidiary company which combines with the target company. If the combination of the subsidiary and target companies results in one of the companies continuing to exist while the other ceases to exist, the combination is classified as a merger. However, where both companies cease to exist and a new company is formed as a result of the transaction, which is what happened in the case at bar, the combination is called a consolidation. The acquisition is completed when the shareholders of the target company (which emerges as the surviving entity) exchange their stock for the stock of the parent company. If the parent company can acquire at least eighty percent of the outstanding stock of the surviving entity, then the above mentioned exchange of stock is tax-free. *See* Exhibit "L" of Defendant's Supplemental Brief in Opposition To A Temporary Restraining Order.

In order to take advantage of the reverse triangular merge acquisition method, a majority of the board of directors of KFNB, the target company, applied to the Federal Reserve Board for prior approval of the formation of a bank holding company, which acts as the parent company in the consolidation. Later, on July 20, 1981, a majority of KFNB's directors formed a Texas corporation, Defendant Kilgore First Bancorp, Inc. (Bancorp) for the express purpose of acquiring and holding all the outstanding stock of

KFNB. Bancorp's directors then moved to charter a phantom state bank to act as its controlled subsidiary in the consolidation. This phantom bank, New Kilgore First State Bank (interim bank) subsequently received its certified Articles of Association and a Certificate of Authority to do Business from the Commissioner of the Texas Banking Department on May 18, 1982.

The Federal Reserve Bank of Dallas, acting pursuant to delegated authority, on January 19, 1982, approved the application filed by Bancorp under section 3(a)(1) of the Bank Holding Company Act of 1956 to become a bank holding company. The plan of consolidation was presented to all shareholders of KFNB via a detailed proxy statement of KFNB and a prospectus of Bancorp released on September 30, 1983. The plan of consolidation was approved by a vote of the holders of two-thirds of the outstanding shares of KFNB and of the interim bank at a specially called meeting on October 22, 1982. Thereafter, on October 27, 1983, the Federal Deposit Insurance Corporation and the Comptroller gave their approval to the plan of consolidation. Plaintiff voted against the plan of consolidation, thereby becoming a dissenting shareholder under the terms and provisions of 12 U.S.C. §215(b)(c) and (d). As authorized by section 215(d), the Comptroller, on March 16, 1983, gave notice of his intention to cause an appraisal to be made of the shares of KFNB held by shareholders dissenting from the consolidation of KFNB and the interim bank, effective as of December 3, 1982. This appraisal was initiated at the request of Plaintiff by letter dated February 7, 1983 and at the request of the Defendants by letter dated February 23, 1982.

On June 13, 1982, the Comptroller, after reviewing materials furnished by Bancorp and the dissenting

shareholders, appraised the value of the dissenter's stock at $279.69 per share. Plaintiff was paid the appraised value of his 1705 shares of KFNB stock by Bancorp on June 30, 1982. Subsequently, Bancorp scheduled a public auction of the stock as required by section 215(d) for July 29, 1983. On July 19, 1983, Plaintiff filed suit against Bancorp and KFNB challenging the value placed upon his stock by the Comptroller and the propriety of the Comptroller in making the appraisal in the first instance. Plaintiff also sought a temporary restraining order and a preliminary injunction to stop the scheduled auction of stock by Bancorp because of his contention that section 215(d) can only be satisfied by an auction of KFNB stock. Plaintiff claims that Defendants' intention to auction Bancorp stock would be a violation of 215(d). Based upon this argument the Court, on July 26, 1983, temporarily restrained Defendants from auctioning off Bancorp stock.

CONCLUSIONS OF LAW

The four prerequisites for the issuance of a preliminary injunction are (1) a substantial likelihood that the movant will prevail on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is not granted; (3) that the threatened injury to the movant outweighs the threatened harm an injunction may cause the opponent; and (4) that granting the preliminary injunction will not disserve the public interest. *Southern Monorail Co. v. Robbins & Myers, Inc.*, 666 F.2d 185, 186 (5th Cir. 1982). After reviewing the facts in this case as found *supra.* and the applicable law, the Court can come to no conclusion but that Plaintiff has not sustained his burden of proving a substantial likelihood of success on the merits of his claim.

As mentioned earlier, Plaintiff seeks to have the auction of Bancorp stock enjoined because he believes that the express terms of 12 U.S.C. §215(d) mandate that KFNB stock be sold. Section 215 of Title 12 of the United States Code governs consolidations involving national banking associations. The section, in general, provides that two or more banking entities, either state or nationally chartered, may be consolidated under the chartaer of the national bank on the terms and conditions approved by a majority of the board of directors of each bank proposing to consolidate. The plan of consolidation agreed to by a majority of the board of directors of the consolidating banks must then be approved by a two-thirds majority of the shareholders of each bank proposing to consolidate at a meeting called by the directors for such purpose, after specified published notice. Thereafter, the consolidation shall be approved or disapproved by the Comptroller. Any shareholder of a consolidating bank who voted against the plan of consolidation at the above mentioned meeting or gave written notice of his dissension from the plan of consolidation prior to the meeting, is entitled to receive the value of the shares held by him at the time the consolidation is approved by the Comptroller, provided the dissenting shareholder requests payment within thirty days after the plan of consolidation is approved and surrenders his stock certificates. The value of the dissenter's shares are then to be ascertained by a three person committee chosen by the board of directors of the consolidated entity and a majority of its shareholders.

Subsection (d) of section 215 states that if the above mentioned appraisal committee is not selected or, if selected, fails to determine a value for the dissenter's shares within ninety days from the date the plan of consolidation is approved, then the Comptroller shall, upon

written request, cause an appraisal to be made which shall be final and binding on all parties. It then goes on to provide that,

> "[t]he value of the shares ascertained [by the Comptroller's appraisal] shall be promptly paid to the dissenting shareholders by the consolidated baking association. Within thirty days after payment has been made to all dissenting shareholders as provided for in this section the shares of stock of the consolidated banking association *which would have been delivered to such dissenting shareholders had they not requested payment* shall be sold by the consolidated banking association at an advertised public auction...."

12 U.S.C. §215(d) (1976) (emphasis added). If the public auction just mentioned occurs and the shares are sold at a price greater than the amount paid to the dissenting shareholders the excess in such sale price shall be paid to such dissenting shareholders.

As is evident from a reading of the findings of fact in this case, heretofore made by the Court, Defendants have met all necessary prerequisites to the acquisition of KFNB by Bancorp. Moreover, Plaintiff has taken all steps required to preserve his rights as a dissenting shareholder from the plan of consolidation. As such, the "auction" provision of section 215(d), the final step contemplated in the consolidation procedure, is now amenable to analysis and discussion by the Court. Before undertaking this task the Court regretfully notes that neither it, nor any of the parties have been able to locate any case law dealing with or discussing the auction procedure detailed in section 215(d). Therefore, the Court must consider the wording of the section and attempt to interpret its meaning in light of the circumstances existing in this case.

The predecessor statute to 12 U.S.C. §215 was enacted in 1918. In 1959, the provision was amended and reclassified to its present section in Title 12. The operative language of section 215 substantially approximates the language found in the consolidation statute enacted in 1918, a time when few banking holding companies were in existence. However, since 1918 the ownership of banks by holding companies had proliferated to such a point that Congress deemed it to be in the best interests of the public to pass legislation regulating the acquisition of banks by holding companies. This legislation took the form of the Bank Holding Company Act of 1956, 12 U.S.C. §1841, *et seq.* This Act was amended in 1970 to specifically include one-bank holding companies within its purview. The meaning of the language in section 215(d) is abundantly clear when applied to a two-party consolidation between two existing banks, as was the common occurrence at the time the original enactment was passed. However, as Plaintiff has shown, the language of 215(d) leaves much to be desired when applied to the three-party reverse merger/consolidation transactions, as explained *supra.*, so prevalent in today's business world.

The problems with section 215(d), as applied to holding company consolidations, is illustrated by Plaintiff's argument that the holding company in this case, Bancorp, is merely a business corporation chartered under the laws of Texas and cannot, in any way, be considered a "consolidated banking association" as mentioned in the statute. Since 215(d) states that the shares of stock to be sold at the auction are those of the consolidated banking association, Plaintiff contends that 215(d) can only be satisfied by an auction of KFNB stock, since KFNB is the only entity that can be classified as a consolidated banking association. This argument would have some force if not for

the Court's duty to interpret subsection (d) as an integrated whole. Reading section 215(d) in its entirety, the Court notes that the stock to be auctioned off is that the dissenting stockholders would have received had they not dissented. Admittedly, if this transaction was cast as a simple two-party consolidation between existing banks, KFNB stock would be the stock auctioned. However, the reorganization in this cause is a complicated three-party transaction involving KFNB, a phantom or interim state bank and a holding company, Bancorp. Under this three-way exchange and consolidation program, or reverse triangular merger, shareholders of KFNB approving the reorganization plan are to receive Bancorp stock, and in some case a 12% debenture, in exchange for their KFNB stock. Therefore, the stock to be auctioned off to pay dissenting shareholders is Bancorp stock because that is the stock the dissenting shareholders would have been delivered had they not exercised their right to dissent from the plan of consolidation. This conclusion is based, in part, upon the Court's determination that the reorganization plan as adopted by a majority of KFNB's shareholders contemplates a one-step process whereby the consolidation of KFNB and the interim state bank and the acquisition of the surviving entity by Bancorp is blended into one transaction involving only one exchange of stock, and not a two-step process with two separate stock exchanges as contended by Plaintiff. Despite the inexact language found in section 215(d), the Court finds that a sale of Bancorp stock would, in all probability, comply with the spirit of the statute's public auction provision. For this reason, the Court concludes that Plaintiff's likelihood of success on the merits of his claim that section 215(d) requires KFNB and not Bancorp stock to be auctioned does not possess the substantiality required to justify the grant of a preliminary injunction in this case.

A preliminary injunction may not issue unless the movant carries the burden of persuasion as to *all* four prerequisites. *Vision Center v. Opticks, Inc.*, 596 F.2d 111, 114 (5th Cir. 1979), *cert. denied*, 444 U.S. 1016 (1980). (Emphasis added). A finding against the Plaintiff on any of the four prerequisites will justify the refusal of preliminary injunctive relief. *Continental Oil Co. v. Crutcher*, 465 F.Supp. 118, 120 (E.D.La.1979). Because Plaintiff has not carried his burden of proof as to the first prerequisite required for the grant of a preliminary injunction, the Court does not find it necessary to discuss prerequisites two through four. Plaintiff's motion for a preliminary injunction will be denied and the temporary restraining order heretofore granted by the Court will be dissolved.

LET AN ORDER ENTER ACCORDINGLY.

SIGNED this 22nd day of November, 1983.

/s/ Signed

UNITED STATES DISTRICT JUDGE

84-1582 (2)

NO.

FILED
APR 5 1985
ALEXANDER L. STEVAS
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1984

R. S. MARTIN, JR., ET AL

Petitioners,

versus

KILGORE FIRST BANCORP, INC.

and

KILGORE FIRST NATIONAL BANK

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI VOL. II

CHARLES H. CLARK
P. O. Box 98
Tyler, Texas 75710
Telephone: 214/593-2514

Attorney for Petitioners

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

85 pp

APPENDIX "D"

PROSPECTUS OF KILGORE FIRST BANCORP, INC.

AND PROXY STATEMENT OF

KILGORE FIRST NATIONAL BANK

37,500 Shares

KILGORE FIRST BANCORP, INC.

Common Stock, Par Value $1.00 per Share

$1,777,900, principle amount,
12% Subordinated Debentures

The shares of the common stock of Kilgore First Bancorp, Inc. (the "Holding Company") to which this prospectus and proxy statement relate are being offered to the shareholders of Kilgore First National Bank, Kilgore, Texas (the "Bank"), in exchange for all of the outstanding stock of the Bank pursuant to a proposed consolidation of the Bank with a subsidiary of the Holding Company.

As described herein, the proposed consolidation is being submitted to a vote of shareholders of the Bank at a special meeting to be held on October 22, 1982. If the proposed consolidation is approved by the shareholders and other applicable conditions are satisfied, each outstanding share of Bank common stock, $20.00 par value, will be exchanged for and converted into one (1) share of Holding Company common stock, $1.00 par value, except shares of Bank stock acquired by the Holding Company for cash

pursuant to the exercise of dissenting shareholders' rights as described herein. Certain principal shareholders will have up to $98.67 of debt per share assumed by the Holding Company. To the extent shareholders do not have debt of $98.67 per share, they will receive one 12% subordinated debenture with a face value of $98.67 for each share of Bank stock exchanged.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this Prospectus is September 30, 1982.

TABLE OF CONTENTS

	Page
SUMMARY OF THE PROPOSED BANK HOLDING COMPANY REORGANIZATION AND CONSOLIDATION	6
THE PLAN OF REORGANIZATION	6
REASONS AND BASIS FOR THE PLAN	6
Debt Assumption	6
PROXIES AND REQUIRED VOTE	7
RIGHTS OF DISSENTING SHAREHOLDERS	8
TAX CONSEQUENCES	8
OPERATIONS AFTER CONSUMMATION OF THE PROPOSAL	8
COMPARISON OF LEGAL RESTRICTIONS ON KILGORE FIRST NATIONAL BANK AND THE HOLDING COMPANY	8
OTHER CONSIDERATIONS	9
SPECIAL MEETING OF THE SHAREHOLDERS	10
THE PLAN OF REORGANIZATION	11
Description of the Plan	11
Conditions to Consummation of the Plan	14
Reasons for Reorganization	14
Assumption of Debt	15
Equalization for Shareholders Without Debt	15
Increase in Capital	16
Expansion of Banking Business	16
Repurchase of Holding Company Stock	16
Increased Business Flexibility	16
Description of Holding Company Debt	16
Special Risk Factors	17
Appraisal Rights of Dissenting Shareholders	17
FEDERAL TAX CONSEQUENCES	19
Other Possible Consequences	21
MARKETABILITY OF COMMON STOCK OF HOLDING COMPANY AND KILGORE FIRST NATIONAL BANK	21

	Page
DESCRIPTION OF KILGORE FIRST BANCORP, INC.	21
Organization and Operation	21
Supervision and Regulation	22
Management and Principal Shareholders	23
Principal Security Holders of the Company	24
Compensation of Officers and Directors	25
Description of Capital Stock	25
Description of Preferred Stock	25
Dividend Rights	26
Voting Rights	26
Redemption	26
Liquidation or Dissolution Rights	27
Preemptive Rights	27
Description of Common Stock	27
Dividend Rights	27
Voting Rights	27
Liquidation Rights	27
Preemptive Rights	28
Miscellaneous	28
Reports	28
Property	28
Legal Proceedings	28
Financial Statements	28
Pro Forma Statements of Earnings	29
Notes to Unaudited Pro Forma Statements of Earnings	30
Unaudited Pro Forma Consolidated Statements of Earnings	31
Notes to Unaudited pro Forma Statements of Earnings	32
Unaudited Pro Forma Consolidated Balance Sheet	33
Notes to Pro Forma Consolidated Balance Sheets	35
Unaudited Pro Forma Balance Sheets	36
Notes to Pro Forma Balance Sheet	37
Comparative Selected Per Share Data	38
Pro Forma Capitalization	39

	Page
DESCRIPTION OF NEW KILGORE FIRST STATE BANK	40
DESCRIPTION OF KILGORE FIRST NATIONAL BANK	40
History	40
Business	40
Competition	41
Employees	42
Properties	42
Regulation and Supervision	42
Litigation	43
Management of Kilgore First National Bank	43
Capital Structure of the Bank	46
Remuneration of Directors and Principal Officers	46
Transactions with Directors, Officers and Associates	46
Trusteed Affiliate	47
Financial Information	48
Summarized Financial Information	49
Management Discussion and Analysis of Financial Condition and Results of Operations	50
Unaudited Balance Sheet	53
Unaudited Statements of Earnings	54
Statements of Changes in Financial Position	55
Results of Operations	56
Financial Condition and Capital	56
Selected Statistical Data	57
COMPARISON BETWEEN HOLDING COMPANY STOCK AND STOCK OF KILGORE FIRST NATIONAL BANK	65
Authorized But Unissued Stock	65
Dividend Rights	65
Voting Rights	66
Cumulative Rights	66
Preemptive Rights	67
Liquidation Rights	67
Assessment and Redemption	67

	Page
OTHER MATTERS	67
Legal Opinions	67
Experts	68
Indemnification	68
Interests of Named Experts and Counsel	68
APPENDIX A—Agreement and Plan of Consolidation	69
APPENDIX B—Appraisal Rights of Dissenting Shareholders	80
APPENDIX C—Debenture	83

If the Plan of Reorganization is effected, the Holding Company will provide to its shareholders annual reports of the Holding Company, including consolidated financial statements of the Holding Company and the Continuing Bank. These reports will be audited by independent accountants.

The Holding Company has filed with the Securities and Exchange Commission (the "Commission"), Washington, D.C., a Registration Statement under the Securities Act of 1933, as amended, with respect to the Common Stock offering hereby. This Prospectus does not contain all the information set forth in the Registration Statement, certain portions of which have been omitted pursuant to the rules and regulations of the Commission. The information omitted may be obtained from the Commission's principal office in Washington, D.C., upon payment of the fees prescribed by the Commission.

The Holding Company hereby undertakes to provide without charge to each person to whom a copy of this Proxy Statement has been delivered, upon their written or oral request, a copy of any or all documents incorporated

by reference in this Proxy Statement, other than exhibits to such documents. Written requests should be directed to Mr. Charles R. Wooldridge, Kilgore First Bancorp, Inc., 910 North Kilgore Street, Kilgore, Texas 75662, telephone number (214) 984-1511.

No person has been authorized to give any information or to make any representation not contained in this Proxy Statement and Prospectus and, if given or made, such information or representation must not be relied upon as having been authorized. This Proxy Statement and Prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities other than the registered securities to which it relates or an offer to sell or a solicitation of an offer to buy to any person in any jurisdiction in which it would be unlawful to make such offer of solicitation. Neither the delivery of this Proxy Statement and Prospectus at any time, nor any offer or solicitation made hereunder, shall under any circumstances imply that the information herein is correct as of any time subsequent to its date.

SUMMARY OF THE PROPOSED BANK HOLDING COMPANY REORGANIZATION AND CONSOLIDATION

The following is a brief summary of certain information with respect to the matter to be considered at the special meeting of the shareholders of Kilgore First National Bank. This summary is necessarily incomplete and is qualified in its entirety by the more detailed information contained in or incorporated by reference in this Proxy Statement. Shareholders should carefully read these materials.

THE PLAN OF REORGANIZATION

The Special Meeting has been called to permit the shareholders of Kilgore First National Bank (hereinafter the "Bank") to consider and take action upon a Plan of Reorganization (hereinafter the "Plan") to consolidate the Bank with and into a newly organized state banking association, New Kilgore First State Bank (hereinafter the "Interim Bank"), which will be a wholly-owned subsidiary of Kilgore First Bancorp, Inc. (hereinafter the "Holding Company"). Upon consummation of the consolidation, shareholders of the Bank will receive either one share of Holding Company common stock and one 12% Subordinated Debenture issued by the Holding Company or (in the case of certain principal Bank shareholders) one share of Holding Company common stock and the right to have certain indebtedness assumed for each share of Bank stock held by them. See "The Plan of Reorganization."

REASONS AND BASIS FOR THE PLAN

A majority of the Board of Directors of the Bank has concluded that the Plan would be in the best interest of the Bank and its shareholders and, therefore, recommends a vote for approval of the Plan. In the opinion of these directors, consummation of the Plan will afford the Bank greater flexibility in responding to the expanding financial needs of its customers, in meeting the increasing competition for providing financial services, and in raising any additional capital necessary to meet future growth requirements of the Bank.

Debt Assumption

Although the Plan provides the flexibility needed for

responding to a changing banking environment and for efficiently obtaining equity capital in the future, the Plan also provides additional benefits to certain principal shareholders of the Bank who collectively own 21,041 shares or 56% of the outstanding shares of Bank stock (and who are hereinafter referred to as the "Principal Shareholders"). The Principal Shareholders are identified below under the caption "Description of Kilgore First Bancorp, Inc.—Management and Principal Shareholders." If the Plan is approved, the Holding Company will borrow approximately $1,922,000 from Republic National Bank of Dallas, Dallas, Texas, which will be used primarily to assume certain debt of the Principal Shareholders which was incurred by them in connection with the original acquisition of their shares of Bank stock. The Plan provides that each of the Principal Shareholders will receive one (1) share of Holding Company common stock and have up to $98.67 of debt assumed by the Holding Company for each one share of Bank stock held by the Principal Shareholders.

The principal reason for the proposed assumption of the stock acquisition debt by the Holding Company is that the indebtedness can be more efficiently serviced by the Holding Company because of the preferential treatment which the federal tax laws afford to inter-corporate dividends. Because the Principal Stockholders will benefit from the assumption of their acquisition related indebtedness by the Holding Company, the Plan provides that those shareholders other than the Principal Shareholders (which shareholders are hereinafter collectively referred to as the "Minority Shareholders") will receive a 12% Subordinated Debenture of the Holding Company in an amount equal to $98.67 for each one share of Bank stock exchanged in order to equalize the economic benefits of the proposed transaction as to the Minority Shareholders. (See "Reasons for Reorganization.")

For further information, see "The Plan of Reorganization" below.

PROXIES AND REQUIRED VOTE

Proxies will be voted as specified therein unless no choice is indicated, in which event such proxies will be voted in favor of the proposal. If the enclosed form of proxy is executed and returned, it may be revoked at any time before it is exercised by written notice to the Bank, by the execution of a new proxy, or by voting in person the shares subject to the proxy. The affirmative vote of not less than two-thirds of the outstanding shares of the capital stock of the Bank is required to approve the Plan. Only shareholders of record of the Bank at the close of business on September 30, 1982, are entitled to notice of and to vote at the meeting. This Proxy Statement has been mailed to all holders of record of capital stock of the Bank at such date on or about September 30, 1982.

Upon consummation of the Holding Company, the Principal Shareholders of the Holding Company will own approximately 56% of the Holding Company's stock. These shareholders currently own 56% of the outstanding shares of the Bank.

RIGHTS OF DISSENTING SHAREHOLDERS

Any shareholder of the Bank may dissent from the consolidation and obtain the value of his shares of Bank stock by following the procedures set forth in 12 U.S.C. 215 (1980). In order to exercise dissenter's rights, the dissenting shareholder must vote against the Plan of Reorganization and request in writing within thirty days after consummation of the Plan of Reorganization that he is entitled

to receive the fair value of his shares. However, if the dissenting shareholder votes against the Plan of Reorganization but does not make the aforementioned request upon the Continuing Bank, the dissenting shareholder must participate in the Plan of Reorganization. For a complete description of dissenting shareholders' rights, see "Appraisal Rights of Dissenting Shareholders."

TAX CONSEQUENCES

The Bank will not apply for a ruling from the Internal Revenue Service concerning the proposed transaction. However, it is anticipated that no gain or loss will be recognized by the shareholders of the Bank other than the Principal Shareholders upon the transfer of their Bank stock to the Holding Company in exchange for Holding Company stock. Each shareholder of the Bank is urged to consult his or her own tax advisor as to the federal income tax consequences in his or her own particular circumstances. See "Federal Tax Consequences to Shareholders."

OPERATIONS AFTER CONSUMMATION OF THE PROPOSAL

Following consummation of the Plan, it is anticipated that the business of the Bank will be continued as it is at the present time and the officers of the Bank will continue in their present positions. There are no agreements with any officer or employee of the Bank concerning any change in compensation following consummation of the Plan.

COMPARISON OF LEGAL RESTRICTIONS ON KILGORE FIRST NATIONAL BANK AND THE HOLDING COMPANY

The Bank is organized under the national banking laws and as such, its activities are generally limited to commercial banking. The Holding Company is a business corporation organized under the laws of the State of Texas and, after consummation of the Plan, will become a bank holding company registered with the Board of Governors of the Federal Reserve System. As a bank holding company, the Holding Company may engage in certain activities which are not permitted for a national banking association. Most significantly, the Holding Company may own interests in other banks within the limits and under the conditions of the Bank Holding Company Act of 1956, as amended, and the regulations issued thereunder. Also, within such limits and conditions, the Holding Company may make and acquire loans and other extensions of credit such as those made by a mortgage company, may act as an insurance agent or broker, may act as an underwriter for credit life, accident and health insurance related to extensions of credit and may engage in other activities which the Federal Reserve Board determines to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.

OTHER CONSIDERATIONS

The Holding Company is authorized to issue 1,000,000 shares of cumulative preferred stock, $1.00 par value and 1,000,000 shares of common stock, $1.00 par value. The Holding Company will exchange 37,500 shares of its common stock for 37,500 shares of the common stock of the Bank, leaving the remainder of its common and

preferred stock available in the future for raising additional equity capital, corporate acquisitions, or any other proper purpose. Additionally, the Holding Company will issue 12% Subordinated Debentures in amounts of $98.67 pursuant to the conditions within the Plan. Shareholders of the Holding Company will not be entitled to cumulative voting nor will they have preemptive rights with respect to the issuance of shares. See "Description of Capital Stock."

PROXY STATEMENT-PROSPECTUS

SPECIAL MEETING OF SHAREHOLDERS TO BE HELD OCTOBER 22, 1982

This Proxy Statement is furnished in connection with the solicitation by a majority of the Board of Directors of Kilgore First National Bank, Kilgore, Texas (hereinafter "Bank"), of Proxies for use at a Special Meeting of Shareholders of the Bank to be held October 22, 1982. The record date for determining stock ownership is September 30, 1982. Only shareholders of record as of September 30, 1982 will be entitled to notice of, and to vote at, the Special Meeting. As of September 30, 1982, the Bank had issued and outstanding 37,500 shares of Common Stock with a par value of $20.00 per share.

The cost of soliciting Proxies will be borne by the Bank. In addition to use of the mails, Proxies may be solicited personally or by telephone or telegraph by officers, directors and certain employees who will not be specially compensated for such soliciting. The estimated cost of the solicitation is approximately $5,000, excluding legal and accounting fees.

It is intended that the shares represented by the enclosed Proxy will be voted, unless otherwise indicated on the Proxy, for approval and authorization of one matter:

> For approval of a Plan of Reorganization which includes the Consolidation Agreement under which the Bank will be consolidated into New Kilgore First State Bank, a wholly-owned subsidiary of Kilgore First Bancorp, Inc., and for authorization of such further action by the Board of Directors and proper officers of the Bank as may be necessary or appropriate to carry out the intents and purposes of such Plan.

With respect to the Plan of Reorganization, shareholders are entitled to one vote for each share of stock.

A majority of the Bank's directors has indicated the intention to vote in favor of the Plan of Reorganization. Mr. R. S. Martin and Mr. Ruben Martin, III, both of whom are directors of the Bank, have indicated in writing that they intend to oppose the Plan.

Directors R. S. Martin and Ruben Martin, III have opposed the Plan of Reorganization on the grounds that the reorganization will not be in the best interests of the minority shareholders. These Directors have objected to the assumption of acquisition debt by the Holding Company, the rate of interest which the subordinated debentures to be issued to the majority shareholders will bear, and the price to be paid to non-resident shareholders.

These Directors own approximately 4.5% of the outstanding shares of the Bank and have solicited proxies in an attempt to defeat the consummation of the Plan of Reorganization. The management of the Bank does not

anticipate any legal action with respect to the aforementioned opposition nor does it anticipate that this opposition will prevent the proposed consummation of the Plan.

Any shareholder submitting a proxy has the right to revoke it at any time before it is exercised. Therefore, execution of the proxy accompanying this proxy statement will not in any way affect the shareholder's right to attend the meeting in person. Revocation may be made prior to the meeting by written revocation sent to the Cashier of the Bank at the office of the Bank at 910 Kilgore Street, Kilgore, Texas 75662, or it may be done personally upon oral or written request at the Special Meeting. The shares represented by proxies will be voted unless the proxy is mutilated or otherwise received in such form or at such time as to render it void. In absence of specific instructions to the contrary, proxies received by the Bank will be voted in favor of the proposals described herein.

THE PLAN OF REORGANIZATION

Description of the Plan

Shareholders of Kilgore First National Bank will consider and vote upon a proposed Plan of Reorganization which will result in a corporate structure in which the Bank will become a wholly-owned subsidiary of the Holding Company. The present structure prohibits the Bank from expanding its services into other fields of financial and management activities relating to banking because of restrictions imposed by statutes on banks. Those restrictions do not similarly limit bank holding companies. Therefore, to create a more flexible structure and to provide the Bank with a more efficient means of obtaining equity capital, the management of the Bank authorized

the following transactions necessary to consummate the Plan.

The Holding Company will effect the acquisition of the Bank pursuant to a statutory consolidation in which an Intearim Bank organized and chartered by the Holding Company under the Texas Banking Code of 1943, as amended, will be consolidated with and into the Bank. The Interim Bank will be a wholly-owned subsidiary of the Holding Company and will have no business activity except the consolidation with the Bank. The Interim Bank will be capitalized with $5,000 in accordance with regulatory requirements.

In accordance with the terms of the Agreement and Plan of Consolidation, it is proposed that the Bank will be consolidated with the Interim Bank pursuant to the provisions of 12 U.S.C. 215 (1980). Thus, at the effective date of the consolidation, the corporate existence of the Interim Bank and the Bank will be consolidated and become the Continuing Bank which shall be deemed to be the same corporation as the Interim Bank and the Bank. The Continuing Bank will acquire all assets and will assume all liabilities of the Bank. The Continuing Bank will conduct its business under the Articles of Association and the Bylaws of the Bank. The officers and directors of the Continuing Bank shall be the same as those of the Bank.

Upon consummation of the consolidation, the Holding Company will acquire 100% of the common stock of the Bank and each shareholder of the Bank will become a shareholder of the Holding Company. Each shareholder of the Bank, except the Principal Shareholders, will be entitled to receive one share of Holding Company stock plus one 12% Subordinated Debenture in the aggregate amount

of $98.67 for each share of Bank stock surrendered in the exchange. The Principal Shareholders will be entitled to receive one share of Holding Company common stock for each share of Bank stock surrendered in the exchange plus the following additional consideration: the Principal Shareholders will have an aggregate of $1,922,000 ($98.67 per share) of personal indebtedness incurred in connection with the acquisition of their shares of the Bank assumed by the Holding Company. The amount of debt per share for each Principal Shareholder to be assumed by the Holding Company will be internally allocated by the Principal shareholders in accordance with each principal Shareholder's individual financial and tax considerations. This Proxy Statement makes no representation or judgment as to the amount of debt per share to be assumed by each Principal Shareholder. The names of the Principal Shareholders and the amounts of stock owned by each are set forth under "Description of Kilgore First Bancorp, Inc.—Management and Principal Shareholders."

Upon consummation of the consolidation, the ultimate result is that the Holding Company will own all of the stock of the Continuing Bank and the former shareholders of the Bank will become shareholders of the Holding Company—one group of such shareholders receiving Holding Company common stock and 12% Subordinated Debentures and the other group receiving Holding Company common stock plus the assumption and discharge of their indebtedness. The effect of the approval of the Plan of reorganization on the two groups of Bank shareholders with respect to one share of common stock is summarized in the following table:

	Before Consolidation	After Consolidation
Minority holders of Kilgore First National Bank common stock	One share of Kilgore First National Bank common stock	One share of Holding Company common stock plus one 12% Subordinated Debenture in the amount of $98.67
Principal Holders of Kilgore First National Bank common stock	One share of Kilgore First National Bank common stock pledged to secure $98.67 of principal indebtedness	One share of Holding Company common stock plus $98.67 of principal indebtedness assumed and paid by the Holding Company

The terms of the Plan, including the Agreement and Plan of Consolidation, the relative value of the Subordinated Debentures, and assumption of indebtedness, were all negotiated by the Boards of Directors of the Holding Company, the Bank and the Interim Bank. Since many directors serve on more than one of the aforementioned Boards, those directors might be deemed to be not independent and the relative values of the Subordinated debentures and assumption of indebtedness might be deemed not to have been determined in arms-length negotiations. Each shareholder of the Bank must individually consider the terms of the Plan, including the exchange of stock and assumption of indebtedness after the consolidation, and the proposed operations of the Holding Company (which may be more divaersified than that of the Bank) in making the decision of whether to approve the Plan and the Agreement and Plan of Consolidation. Shareholders of the Bank who vote against the Plan and who perfect their dissenters'

rights will be entitled to receive cash, equal to the value of their shares of the Bank in accordance with their dissenters' rights as provided in 12 U.S.C. 215 (1980). See "Appraisal Rights of Dissenting Shareholders."

The expenses of effectuating the Plan of Reorganization are estimated at approximately $40,000. In the event the Plan is not consummated, the Bank will assume such expenses as are incurred, including the cost of organizing the Holding Company. If the Plan is consummated the Continuing Bank will issue a dividend to the Holding Company to pay the organizational expenses.

Conditions to Consummation of the Plan

Consummation of the consolidation is conditional upon the approval thereof by a vote of the holders of two-thirds of the outstanding shares of the Bank and of the Interim Bank. The Federal Reserve Bank of Dallas, acting pursuant to delegated authority, approved the application filed by the Holding Company under Section 3(a)(1) of the Bank Holding Company Act of 1956, as amended, to become a bank holding company on January 19, 1982. The application to consolidate has been filed with the Federal Deposit Insurance Corporation (hereinafter "FDIC"); however, until the requisite affirmative vote of the shareholders of both banks is obtained, the FDIC will not issue a final approval. Approval of the Comptroller of the Currency, pursuant to 12 U.S.C. 215 (1980) has not yet been obtained, but such approval is expected to be received concurrently with that of the FDIC. The Interim Bank has received its certified Articles of Association and a Certificate of Authority to do business from the Commissioner of the Texas Department of Banking pursuant to the Texas Banking Code of 1943, as amended.

The Plan may not be consummated within thirty days after approval by federal regulatory authorities, during which period the United States Department of Justice may file suit to enjoin the consolidation, should it object to the consolidation for competitive reasons.

The obligation of the Bank and the Holding Company to consummate the proposal may be terminated if (1) all requisite regulatory approvals are not obtained; (2) the consolidation no longer appears to be in the best interests of the Bank; (3) the number of shares of common stock of the Bank voted against the proposal, or in respect of which written notice is given purporting to dissent from the proposal makes consummation of the proposal unwise; or (4) more than ten percent of the holders of common stock of the Bank exercise their dissenters' rights under 12 U.S.C. 215 (1980).

Reasons for Reorganization

In the judgment of the Board of Directors of the Bank, the proposed reorganization will serve the best interests of the banking public and the shareholders of the Bank by providing a more flexible structure for meeting the increasing competition for financial services, by increasing opportunities for diversification by the Holding Company into nonbanking ventures, and by providing the Bank with a more efficient means of obtaining equity capital.

Assumption of Debt

The justification for the proposed assumption of stock acquisition debt of the Principal Shareholders is that the debt can be more efficiently serviced by the Holding

Company because of the preferential treatment which the federal tax laws afford to inter-corporate dividends. In the absence of the Holding Company, the earnings of the Bank would be taxed twice before the portion of those earnings attributable to the stock held by the Principal Shareholders could be applied by such shareholders to reduce their acquisition indebtedness. These Bank earnings would be taxed first at the Bank level and then again at the individual level when paid to the shareholders as dividends. However, dividends paid to the Holding Company by the Bank will be tax-free. Accordingly, if the Holding Company assumes the acquisition related debt of the Principal Shareholders in connection with the proposed exchange of Holding Company stock for Bank stock, the earnings of the Bank can be applied to reduce such debt without first being subjected to taxation as ordinary income to the individual Principal Shareholders. Substantial tax savings will thereby be realized by the Principal Shareholders.

Equalization for Shareholders Without Debt

Recognizing that the Principal Shareholders will benefit from the Plan in a way that cannot be shared by shareholders not having acquisition related indebtedness to be assumed by the Holding Company, an effort has been made to equalize the economic effects of the proposed transaction as to the Minority Shareholders. Accordingly, the Plan provides for the Minority Shareholders to receive a 12% Subordinated Debenture of the Holding Company in a fair amount equal to $98.67 for each one share of Bank stock exchanged, which is equal to the per share amount of acquisition debt to be assumed by the Holding Company from the Principal Shareholders. The Minority Shareholders will also receive Holding Company common stock on the same one-for-one basis as the Principal Share-

holders. The Principal Shareholders will only receive the Holding Company's Subordinated Debentures pursuant to the Plan to the extent that any of the Principal Shareholders has aggregate acquisition debt amounting to less than $98.67 per share, in which event such Principal Shareholders would receive Debentures in an aggregate amount equal to the amount of such difference.

The Subordinated Debentures will become due thirteen years from the date of issuance. The Holding Company will have the right to prepay the Subordinated Debentures at par value at any time after a period of five years from the date of issuance.

Increase in Capital

The Holding Company may be utilized as a source of financing an increase in the capital of the Bank should the need arise to accommodate its future growth. However, there are no plans at present for the Holding Company to incur debt for this purpose.

Expansion of Banking Business

The reorganization of the Bank as a bank holding company will facilitate the efficient expansion of the Bank's premises because the holding company may be used as a source of financing under applicable laws and regulations. At the present time, the Bank does not have plans for future expansion but anticipates that expansion of its existing premises will be necessary in the future due to the Bank's rapid growth.

Repurchase of Holding Company Stock

The Holding Company may also provide the means of internally financing the repurchase of any common stock of the Holding Company should this stock later become available for sale. Such a repurchase could be useful to provide liquidity for shareholders and to help perpetuate local ownership of the Holding Company and the Bank.

Increased Business Flexibility

While there are currently no plans for the Holding Company to engage in any activity other than ownership of the stock of the Bank, a secondary reason for organization of the Holding Company is to make it possible, if appropriate business opportunities arise in the future, to acquire other bank subsidiaries or to expand the range of services offered to customers of the Bank into one or more areas of activity permissible for a bank holding company. As explained further under the caption "Description of Kilgore First Bancorp, Inc.," a bank holding company may engage in certain business activities that are closely related to banking which a bank may not engage in directly under applicable regulations. In addition, a bank holding company enjoys somewhat greater flexibility with regard to its internal corporate affairs than does a national banking association. See "Supervision and Regulation."

Description of Holding Company Debt

The Holding Company obtained a loan commitment from Republic National Bank of Dallas, Dallas, Texas, for $1,922,000 to be secured by the pledge of all of the capital stock of the Bank (Continuing Bank) now or hereafter owned by the Holding Company. The proceeds of the loan will

be applied to discharge the existing debt of the Principal Shareholders.

The loan will be amortized over a period of twelve (12) years, will mature annually and will bear interest at Republic National Bank's prime rate, as it changes from time to time. Republic National Bank will hold as collateral no less than 80% of the common stock of the Bank.

Special Risk Factors

Upon consummation of the Plan, the Holding Company will own all of the capital stock of the Bank and will become a registered bank holding company under the Bank Holding Company Act of 1956, as amended. Since the Holding Company does not presently contemplate being engaged in any other business activities, the ability of the Holding Company to pay its operating expenses, to service its debt obligations, and to pay dividends to its shareholders will be directly and wholly attributable to and dependent upon the profitability of the Bank and the receipt by the Holding Company of dividends therefrom. As is the case with any financial institution, the profitability of the Bank in turn is subject to the fluctuating availability of money, to loan demand, to changes in the prime lending rate, and to changes in economic conditions in general.

As previously discussed, the Holding Company will incur debt to assume and discharge the acquisition indebtedness of the Principal Shareholders. This debt will be secured by a pledge of the Bank's Common Stock acquired by the Holding Company pursuant to the Plan. For some period following consummation of the Plan, the Holding Company's only significant asset will be the Bank's

Common Stock pledged by the Holding Company to secure the debt. **A future default by the Holding Company in the repayment of this debt could result in the loss through foreclosure of the Bank's Common Stock pledged by the Holding Company.** The Holding Company will not declare dividends until its debt level is substantially reduced.

There is currently no market for the securities of the Holding Company and it is unlikely that a market will develop as a result of this offering. Therefore, shareholders may not be able to readily liquidate these securities in case of a personal financial emergency or otherwise.

Appraisal Rights of Dissenting Shareholders

As required by the provisions of 12 U.S.C. 215 (1980), any shareholder of the Bank who has voted against the proposed consolidation at the special meeting, or has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the proposed consolidation, will be entitled to receive the value of the shares of the Bank held by him as of the time the consolidation is approved by the Comptroller of the Currency upon written request made to the Continuing Bank at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates. Inasmuch as signed, unmarked proxies received will be voted in favor of the proposed consolidation, the Bank takes the position that the submission of such an unmarked proxy, unless written notice of dissent has been given or the proxy has been revoked prior to its being voted, will serve to waive dissenters' rights. The value of the shares of any dissenting shareholder will be ascertained as of the effective date of the consolidation by an apprasial made by a committee of three persons. The committee will

be composed of one person selected by the vote of the holders of a majority of the stock held by dissenting shareholders, the owners of which are entitled to payment in cash by reason of having complied with the above-described provisions of Section 215; one person selected by the directors of the Continuing Bank; and one person selected by the two appraisers so selected. The valuation agreed upon by any two of the three appraisers will govern. The expenses incurred in such appraisal will be allocated between the dissenting shareholders and the Continuing Bank in such manner as shall be deemed fair and equitable by a majority of the appraisers. If the value so fixed is not satisfactory to any dissenting shareholder who has requested payment, such shareholder may, within five days after being notified of the appraised value of such shares, appeal to the Comptroller of the Currency who will cause a reappraisal to be made. The reappraisal of the Comptroller of the Currency will be binding and final as to the value of the shares of the appealing shareholder. If within ninety days from the date of consummation of the consolidation, for any reason one or more of the appraisers is not selected as above provided, or the appraisers fail to determine the value of such shares, the Comptroller of the Currency will, upon written request of any interested party, cause an appraisal to be made which will be final and binding on all parties. The expenses of the Comptroller of the Currency in making the reappraisal or appraisal, as the case may be, will be paid by the Continuing Bank.

The value of the shares as finally ascertained will be promptly paid to the dissenting shareholder by the Continuing Bank. The shares of Holding Company common stock which would have been delivered to dissenting shareholders had they not requested payment will be sold at an advertised public auction, and the Holding Company

shall have the right to purchase any of such shares. If the shares are sold at a price greater than the amount paid to the dissenting shareholders, the excess of the sale price will be paid to the dissenting shareholders. Any shareholder of the Bank who votes against the consolidation at the special meeting or who gives notice in writing at or prior to such meeting to the presiding officer that he dissents from the consolidation will be notified in writing of the date of consummation of the consolidation.

The foregoing summary does not purport to be a complete statement of dissenter's rights of appraisal, and the summary is qualified in its entirety by reference to the applicable provisions of 12 U.S.C. 215, which is attached to this Proxy Statement.

FEDERAL TAX CONSEQUENCES

Section 368(a)(1)(A) and 368(a)(2)(E) as well as Section 354 of the Internal Revenue Code of 1954, as amended (the "Code") provide for the tax-free reorganization of certain corporations. Thus, there is no recognition of gain or loss to exchanging shareholders and security holders in a reorganization in which stock or securities in a corporation which is a party to a reorganization is exchanged solely for stock or securities in that corporation or another corporation which is a party to the reorganization. In the proposed transaction, the Minority Shareholders will exchange stock in the Bank for stock and Subordinated Debentures of the Holding Company. The Principal Shareholders will, in addition to the stock, have certain indebtedness assumed rather than receive Subordinated Debentures. Thus, there are different tax consequences for the Principal Shareholders and the Minority Shareholders. The debentures which are to be issued are long-term debentures intended to qualify as "securities" under the Code.

The tax consequences for the Minority Shareholders, who receive solely stock and debentures are as follows:

(1) No gain or loss will be recognized to the Minority Shareholders on receipt by them of shares of the Holding Company and debentures.

(2) The tax basis of the shares of the Holding Company and the debentures received by the Minority Shareholders of the Bank will be the same as the tax basis of the shares of Bank common stock exchanged therefor allocated as described more particularly below.

(3) The holding period of the shares of the stock received by the Minority Shareholders of the Bank will be the same as the holding period for the shares of Bank common stock exchanged therefor, provided that the Bank common stock is held as a capital asset at the time of the exchange.

The tax consequences for the Principal Shareholders will be somewhat different as they are receiving not only stock but also having certain indebtedness assumed. The consequences of the assumption of the indebtedness will depend upon the position taken by the Internal Revenue Service (the "Service") with regard to such assumption. On September 8, 1980, the Service issued Revenue Procedure 80-34, which was superseded and continued by Revenue Procedure 81-10 setting forth the conditions under which the Service will issue advance rulings concerning the assumption of an individual's stock acquisition debt by a bank holding company for federal income tax purposes. This Revenue Procedure, however, only states the prerequisites which must be met before the Service will consider issuing a ruling. In addition, it is possible that this Revenue Procedure will be revised in light of certain

changes made by the Tax Equity and Fiscal Responsibility Act of 1982, which adds specific sections to existing law with regard to treatment of acquisition indebtedness assumption and bank holding company formation.

The Principal Shareholders of the Holding Company incurred stock acquisition indebtedness during the years of 1971 through 1980. Accordingly, the Principal Shareholders cannot establish that the Holding Company assumed the debt within twelve months of the date it was incurred. The Principal Shareholders will therefore not request a ruling from the Service.

With respect to those shareholders of the Bank who will receive both Holding Company common stock and Subordinated Debentures, section 358(b)(1) of the Code provides that the basis determined under section 358(a)(1) of the Code shall be allocated among the properties permitted to be received without the recognition of gain or loss. In an exchange to which section 354 of the Code applies, if the transferor receives both stock and securities, then the basis of the property transferred shall be allocated among the stock and securities received in proportion to the fair market values of each. Consequently, assuming again that section 354 applies to the exchange, including the receipt of the Subordinated Debentures, the basis of the Holding Company's common stock and Subordinated Debentures received by the shareholders of the Bank should be the same as the basis of the Bank common stock surrendered in exchange therefor, decreased by the amount of acquisition indebtedness assumed, if any, and allocated between the Holding Company's common stock and Subordinated Debentures in propostion to the fair market values of each.

The foregoing description is a summary of the general federal income tax consequences which may be expected to result from the approval of the Plan of Reorganization by the Bank shareholders. Each shareholder is urged, however, to consult his or her own tax advisors as to the federal income tax consequences in light of his or her own particular circumstances as well as the tax consequences under applicable state and local laws.

Other Possible Consequences

Under the laws of some jursidictions shares of the common stock of the Holding Company may not be legal investments for certain institutions and fiduciaries, whereas shares of the common stock of the Bank are.

MARKETABILITY OF COMMON STOCK OF HOLDING COMPANY AND KILGORE FIRST NATIONAL BANK

As previously discussed, there is currently no public trading market for the securities of the Holding Company and it is unlikely that a market will develop as a result of this offering.

A market for sale of the common stock of the Bank has not been established. However, during the year of 1981, 27 shares were sold at $170.37 per share and 31 shares were sold at $160.00 per share.

DESCRIPTION OF KILGORE FIRST BANCORP, INC.

Organization and Operation

The Holding Company was incorporated under the laws of the State of Texas on July 20, 1981, at the direction of the Board of Directors of the Bank for the purpose of acquiring all the outstanding shares of the Bank. The sole incorporator was Bruce L. James. The initial capital of the Holding Company is $1,000 which represents shares issued to Mr. Harris R. Fender for the purpose of perfecting the corporate organization of the Holding Company. Those shares will be repurchased for the price paid and cancelled upon completion of the Plan of Reorganization.

The Holding Company has not yet engaged in any business activity and, at present, has no plans to engage in any activities other than acting as a holding company for the capital stock of the Bank. The Holding Company does not contemplate any substantial expenditures for equipment, plant, or additional property in the near future. However, the Board of Directors of the Holding Company may determine in the future to utilize the Holding Company structure to diversify its activities in accordance with the Bank Holding Company Act of 1956, as amended. The principal operating expense of the Holding Company will be the annual corporate franchise tax required to be paid to the Texas Comptroller of Public Accounts, which will be deductible by the Holding Company for federal income tax purposes. The franchise tax is currently assessed at a rate of $4.25 per $1,000 of the Holding Company's capital, surplus, and undivided profits. The estimated franchise taxes payable by the Holding Company for the first year of its operations will amount to approximately $8,327.87.

Supervision and Regulation

As a bank holding company, the Holding Company will remain subject to regulation by the Board of Governors

of the Federal Reserve System (hereinafter "Board") in accordance with the provisions of the Bank Holding Company Act, as amended, and the rules and regulations promulgated thereunder. Existing regulations require the Holding Company to file reports with the Board and submit to periodic examinations of its affairs by the Board. In addition, prior Board approval is required for any acquisition by the Holding Company of more than 5% of the stock of any bank or other bank holding company. The Holding Company is also prohibited from acquiring a direct or indirect interest in or control of more than 5% of the voting shares of any company which is not a bank, including any foreign company, and from engaging directly or indirectly in activities other than that of banking, managing or controlling banks, or furnishing services to its subsidiaries. However, the Holding Company may engage in, and may own shares of companies engaged in, certain activities found by the Board to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The permitted non-banking activities are (1) making loans that would be made by mortgage, finance, credit card or factoring companies; (2) operating as an industrial bank; (3) servicing loans; (4) performing the functions of a trust company; (5) acting as an investment or financial advisor; (6) leasing personal or real property; (7) making investments to promote community welfare; (8) providing bookkeeping or data processing services; (9) acting as insurance agent or broker with respect to insurance that is directly related to the extension of credit or other financial services; (10) acting as an underwriter for credit life insurance and credit health and accident insurance directly related to extensions of credit by the holding company system; (11) providing courier services for the interna-

operations of the holding company system for checks and certain other instrument exchanges among banks and for audit and accounting media of a banking or financial nature; (12) providing certain kinds of management consulting advice, under specified conditions, to unaffiliated banks and nonbank depository institutions; (13) sale at retail of money orders having a face value of not more than $1,000, and the sale of Unitaed States savings bonds, and the issuance and sale of traveler's checks; and (14) real estate appraisal. An application may also be filed as to other activities in a particular case, but the Federal Reserve Board will publish a notice of opportunity for hearing only if it believes that there is a reasonable basis for concurring in the Holding Company's opinion that the activity applied for is closely related to banking. The Board has stated that at present, the permissible activities of a holding company do not include real estate brokerage and syndication, land development, property management, underwriting or operating of savings and loan operations, management consulting or industrial development corporations.

The Texas Banking Code of 1943, as amended, grants to the Banking Commissioner of the State of Texas the authority to disapprove any acquisition or activity governed by Section 4 of the Bank Holding Company Act of 1956, as amended, which regulates nonbanking organizations, by a bank holding company doing business in the State of Texas, unless the Banking Commissioner finds that it can reasonably be expected to produce benefits to the public, such as greater convenience or increased competition, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest or unsound banking practices.

Management and Principal Shareholders

The table below sets forth the name, address, position, principal occupation, and maximum ownership of the Holding Company's common stock of each executive officer and director upon consummation of the proposed Plan:

Name and Address	Position	Shares of Common Stock to be Owned	Principal Occupation	Percent of Class
Harris R. Fender P.O. Box 449 Tyler, TX 75710	President and Director	14,325	Investments	38.20
Harris R. Fender, Jr. P.O. Box 449 Tyler, TX 75710	Director	3,357	Doctor	8.95
David M. Fender P.O. Box 449 Tyler, TX 75710	Director	3,359	Oil & Gas Operator	8.96
Charles R. Wooldridge 25 Regatta Place Rt. 1 Flint, TX 75762	Director and Secretary	0	President of Bank Management Services Company	0

The number of shares beneficially owned by the directors and officers of the Holding Company as a group after consummation will be 21,041. The directors and officers of the Holding Company as a group will own 56% of the common stock of the Holding Company after consummation. Mr. Fender has a life estate in 9,484 of the total 14,325 shares owned by him. Harris R. Fender, Jr. and David M. Fender each have a remainder interest in 4,742 of those shares.

In the event Directors R. S. Martin and Ruben Martin, III exercise their dissenting shareholders' rights, the Holding Company will pay to them the value of their shares to be determined by the procedures set forth in 12 U.S.C. 215. As therein provided, the shares of Holding Company stock which would have been delivered to them had they not exercised their dissenters' rights, will be sold at a public auction. The Holding Company has the right to purchase those shares.

Principal Security Holders of the Company

At present, Mr. Harris R. Fender is the sole shareholder of the Holding Company, owning all 1,000 shares of the issued and outstanding common stock of the Holding Company. Mr. Fender acquired these shares in June, 1982, for an aggregate consideration of $1,000 solely for the purpose of perfecting the corporate organization of the Holding Company. These shares are to be repurchased and cancelled by the Holding Company following the consummation of the Plan.

Following the consummation the Principal Shareholders of the Holding Company will be Harris R. Fender, Harris R. Fender, Jr., and David M. Fender. See

"Description of Kilgore First Bancorp, Inc.—Management and Principal Shareholders."

Compensation of Officers and Directors

No compensation is expected to be paid for the services of officers or directors of the Holding Company during the first year of its operations, except for compensation paid to such individuals for services rendered as officers or directors of the Bank. In the event that compensation will be paid to the officers and directors of the Holding Company in the future, such compensation will be reasonably related to the time and effort expended in rendering services to the Holding Company and the benefit to the Holding Company of the services provided therein.

DESCRIPTION OF CAPITAL STOCK

The Holding Company is authorized to issue two classes of stock, designated as "common stock" and "cumulative preferred stock." The total number of shares of stock which the Holding Company is authorized to issue is 2,000,000 shares. The number of shares of common stock authorized is 1,000,000 shares with a par value of $1.00 per share. The number of shares of preferred stock authorized is 1,000,000 with a par value of $1.00 per share. The existing and pro forma capitalization of the Holding Company is set forth in the table below.

Title or Class of Securities	No. of Shares Authorized	No. of Shares Outstanding on Sept. 1, 1982	No. of Shares to be Outstanding if Offer is Accepted by All Eligible Shareholders of Bank
Common Stock $1.00 par value	1,000,000	1,000*	37,500
Cumulative Preferred Stock, $1.00 par value	1,000,000	0	0

* Represents shares issued to one of the organizers of the Holding Company solely for the purpose of perfecting its corporate organization. These shares will be repurchased for the price paid and cancelled upon completion of the Plan.

Description of Preferred Stock

The Articles of Association of the Holding Company authorize the Board of Directors to issue the preferred stock in different series and to set the followinng terms of the preferred stock, which may be different in each series:

(a) the rate of dividend;

(b) the price and the terms and conditions on which shares may be redeemed;

(c) the amount payable upon shares in event of involuntary or voluntary liquidation;

(d) sinking funds provisions for the redemption or purchase of shares;

(e) the terms and conditions on which shares may be converted, if the shares of any series are issued with the privileges of conversion; and

(f) voting rights.

The preferred stock is senior to the common stock and thus, the rights of the common shareholder to dividends and assets on liquidation would be subject to the rights of preferred shareholders. Because no preferred stock has been issued, the Board of Directors has not established and designated the terms of the preferred stock.

Dividend Rights

The holders of the preferred stock of each series shall be entitled to receive, when and as declared by the Board of Directors, cumulative preferential dividends at the rate per annum fixed for such series. Dividends on shares of preferred stock of each series shall accrue from the date of the initial issue of shares of such series, or from such other date as may be fixed by the Board of Directors, shall be cumulative and shall be payable quarterly. So long as any shares of preferred stock are outstanding, the Holding Company may not pay or declare any cash dividends on the common stock unless all dividends on the preferred stock have been paid as declared and set apart for payment and there is no default with respect to any sinking fund or purchase fund for the redemption of shares of preferred stock.

Voting Rights

The Board of Directors is vested with authority to adopt resolutions to define the voting rights of the holders of preferred stock. Changes in any of the designations, preferences, limitations and relative rights of the preferred stock may be made with the affirmative vote of the holders of at least two-thirds of the issued and outstanding shares of preferred stock. However, neither the rate of dividends nor the amount payable upon the redemption on voluntary or involuntary liquidation on any shares of preferred stock may be reduced without the consent of the holders thereof.

Redemption

The Holding Company, at the option of the Board of Directors, may redeem the preferred stock of any series which by its terms is redeemable and on the terms and conditions fixed for such series. At least twenty and not more than fifty days' previous notice of any such redemption shall be given to holders of the preferred stock.

Liquidation or Dissolution Rights

Before any distribution is made to the holders of any class of stock ranking junior to the preferred stock, the holders of the preferred stock are entitled to receive in full the redemption amount in addition to a sum equal to the accrued and unpaid dividends unpaid thereon to the date of final distribution upon any liquidation, dissolution, or winding up of the affairs of the Holding Company.

Preemptive Rights

The holders of preferred stock are not entitled to any

preemptive right to subscribe for or purchase any securities.

Description of Common Stock

Dividend Rights

Subject to the prior and superior rights of holders of all shares of preferred stock of the Holding Company that may be outstanding from time to time, the holders of shares of common stock will be entitled to receive dividends thereon if and when declared payable by the Board of Directors.

Voting Rights

Subject to the voting rights which the Board of Directors may prescribe for any series of preferred stock, the holders of common stock shall exclusively possess full voting rights for the election of Directors and for all other purposes. Shareholders of the Holding Company will not be entitled to cumulative voting rights in the election of directors.

Liquidation Rights

After payment shall have been made in full to the holders of the preferred stock in the event of any liquidation, dissolution or winding up of the affairs of the Holding Company, the remaining assets and funds of the corporation shall be distributed pro rata among the holders of the common stock according to their respective shares.

Preemptive Rights

The holders of common stock of the Holding Company are not entitled to any preemptive right to subscribe for or purchase any securities.

Miscellaneous

The balance of the authorized Holding Company common stock and preferred stock will be available for issuance by the Board of Directors to raise additional capital for acquisition or for any other proper Holding Company purpose. As stated elsewhere in this Proxy Statement, the Board of Directors have no specific plans, commitments or arrangements to issue any such stock.

Reports

The Holding Company will be required to file annual, quarterly and other periodic financial and other reports required by the Securities Exchange Act of 1934. If, at the end of any fiscal year the Holding Company has less than 300 holders of any class of security, it may cease to file such reports. Unless the Holding Company has more than 500 holders of any class of security, it will not be subject to the proxy and tender offer rules promulgated pursuant to the Securities Exchange Act of 1934 nor will directors, officers or Principal Shareholders be subject to the "insider trading" provisions of that Act. It is expected that after consummation of the Plan of Reorganization, the Holding Company will have approximately 145 holders of common stock.

The Holding Company also will furnish its shareholders with annual reports containing financial statements.

Property

The Holding Company owns no properties. In the event that its business will require office space, the amount will be minimal, and will be located in the office building of the Bank.

Legal Proceedings

The Holding Company is not a party to any pending legal proceedings before any court, administrative agency or other tribunal. Further, the Holding Company is not aware of any litigation which is threatened against it in any court, administrative agency, or other tribunal.

Financial Statements

Set forth below are pro-forma financial statements for the Holding Company on a parent company only and on a consolidated basis.

FINANCIAL STATEMENTS FOUND ON PROSPECTUS PAGES 29 THROUGH 39 HAVE BEEN INTENTIONALLY OMITTED.

DESCRIPTION OF NEW KILGORE FIRST STATE BANK

At the direction of the Board of Directors of the Holding Company, six individuals, Harris R. Fender, D. R. Brogoitti, David M. Fender, Harris R. Fender, Jr., Charles R. Wooldridge, and James W. Capps, have filed an application to charter New Kilgore First State Bank with the Commissioner of the Texas Department of Banking. The Interim Bank will conduct no business with the public and

was chartered solely to effectuate the Plan of Organization. After the consolidation, the organizers of the Interim Bank will resign their positions as directors.

The minimum capital required to organize the Interim Bank is $5,000. To raise this capital, the Holding Company will obtain a loan from a third-party bank and will purchase 5,000 shares, par value $1.00, of the stock of the Interim Bank.

After the consolidation, the Interim Bank will issue a dividend in the sum of $5,000 to the Holding Company which will in turn use the sum to repay the loan from the third-party bank.

DESCRIPTION OF KILGORE FIRST NATIONAL BANK

History

Kilgore First National Bank is located at 910 North Kilgore Street, Kilgore, Texas. Kilgore is located in Gregg County and has a population of approximately 10,000.

The Bank was established in 1906 and, since that date, it has experienced continuous growth.

Business

The Bank offers a diversified range of commercial banking services for customers principally in Gregg County. These services include the usual deposit functions of commercial banks with savings departments: the making of commerical, consumer, industrial, agricultural, and real estate loans, collections, escrow services, and safe deposit facilities.

The following table shows the growth of the Bank over the past five years (all amounts shown are as of December 31st of the year indicated):

	(in thousands of dollars)				
	1977	1978	1979	1980	1981
Assets	$52,484	$59,044	$69,100	$78,125	$105,161
Deposits	45,537	52,080	61,576	68,978	93,354
Loans*	28,178	33,461	38,270	43,569	57,052
Securities (Municipal)	10,585	10,278	12,753	18,083	30,284
Capital Accounts	5,008	5,806	6,832	8,160	9,736

* Loans exclude federal funds sold and other money market obligations.

Additional information concerning the financial condition and performance of the Bank will be found in the financial statements of the Bank that accompany this Prospectus.

Competition

The Bank will encounter competition in its commercial banking business from savings and loan associations, credit unions, and certain other financial institutions.

The Bank will also face substantial competition from national banks, state banks, savings and loan associations, and credit unions for time and savings deposits, checking or draft accounts, loans, and other deposits. With respect to certain of its services, including but not limited to loans, and particularly with respect to securing funds available for deposits, the Bank will be faced with competition from

other financial institutions such as insurance companies, consumer and business finance or loan companies, industrial loan associations, real estate investment trusts, pension funds, mortgage companies, and credit card organizations. The national equity and debt securities markets also compete for available funds.

Some of the Bank's competitors may offer a total range of services which it does not propose to offer or is unable to offer, and these competitors may thus enjoy a competitive advantage over the Bank. Furthermore, certain provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980 which allow, among other things, the establishment of accounts ("NOW Accounts") in non-bank depository institutions which have some of the characteristics of demand accounts in banks, may serve to increase competition between banks and other financial institutions. The Bank anticipates that it will be able to maintain profitability in the face of this heightened competition, but the long-term effects of the new law are difficult to assess.

The Bank ranks as the fourth largest bank (on the basis of total deposits) in Gregg County, holding approximately 13% of the aggregate deposits held by the fourteen commercial banks in that county.

Employees

As of April 30, 1982, the Bank employed 80 persons. Employees of the Bank are entitled to dental, medical and life insurance benefits and to a profit-sharing plan.

Properties

The Bank is situated on a four acre lot at the corner

of Highway 42 and Kilgore Street in Kilgore, Texas. The buidling is a two story structure of approximately 12,000 square feet.

The Bank has an eight lane motor bank facility as well as a commercial mini lobby with three tellers in a high security environment. The Bank also has a mini-bank lobby with three tellers in an adjacent shopping center and has an automated teller machine (on the Teller 24 network) on its property.

Regulation and Supervision

Kilgore First National Bank, as a national banking association, is subject to various requirements and restrictions under the banking laws of the United States and is subject to regulation, supervision, and regular examination by the Comptroller of the Currency. The Bank is also subject to examination and regulation by the Federal Deposit Insurance Corporation, which insures the Bank's deposits.

As a national bank, the Bank is subject to certain restrictions imposed by the Federal Reserve Act and other national banking laws, including those on any extensions of credit to any affiliates, on any investments in the stock or other securities of affiliates, on the taking of such stock or securities as collateral for loans to any borrower, and on the total obligation of any one person or entity which may be outstanding to a bank at any one time.

The business of national banks is affected in important respects by the policies of monetary authorities, and particularly the Federal Reserve System. An important function of the Federal Reserve System is to regulate the national supply of bank credit in order to achieve, among

other things, maximum employment and a stable price level. Among the instruments of monetary policy used by the Federal Reserve System to implement these objectives are open market transactions in United States Government securities, changes in the discount rate on member bank borrowings, changes in reserve requirements against member bank deposits and limitations on interest rates which member banks may pay on time and savings deposits. These means are used in varying combinations to influence overall growth of bank loans, investments, and deposits, and they may also affect interest rates charged on loans or paid for deposits.

The monetary policies of the Federal Reserve System have had a significant effect on the operating results of commercial banks in the past and are expected to continue to do so in the future. In view of changing conditions in the national economy, in the money markets, and in the relationships of international currencies, as well as the effect of actions by monetary and fiscal authorities including the Federal Reserve System, no prediction can be made as to possible future changes in interest rates, deposit levels, loan demand, capital requirements, or the business and earnings of the banks.

Litigation

Since Kilgore First National Bank acts as a depository of funds, the Bank is named as a defendant in numerous law suits involving claims to the ownership of funds in particular accounts. All such litigation is incidental to the Bank's business. The management of the Bank believes that no litigation is threatened or pending in which the Bank would face potential exposure which would materially affect the shareholder's equity or its financial position as presented herein.

Management of Kilgore First National Bank

The table below sets forth the name, address, position, principal occupation, and ownership of the common stock of Kilgore First National Bank by each officer, director, and principal (5% or more) shareholder.

Name and Address	Position	No. of Shares of Common Stock held as of 5/27/82	Principal Occupation	Percent of Class
Harris R. Fender P.O. Box 449 Tyler, TX 75710	Chairman, Director	14,325[1]	Investments	38.2
R.S. Martin, III 1112 Azalea Longview, TX 75601	Director	50	Vice President, Martin Gas Sales, Inc.	.13
R.S. Martin, Jr. P.O. Box 191 Kilgore, TX 75662	Director	1,494	President, Martin Gas Sales, Inc.	3.98
D.R. Brogoitti 2803 Crestwood Kilgore, TX 75662	President, Director	59	Banking	.16
R.E. Spradlin P.O. Box 1620 Kilgore, TX 75662	Director	50	President East Texas Lumber Co.	.13

[1] Mr. Fender owns 9,484 shares subject to a remainder interest.

M.L. Still P.O. Box 654 Kilgore, TX 75662	Director	183	Investments	.48
David M. Fender P.O. Box 449 Tyler, TX 75710	Advisory Director	3,359	Oil & Gas Investments	8.96
Harris R. Fender, Jr. P.O. Box 449 Tyler, TX 75710	Advisory Director	3,357	Physician	8.95
James W. Capps 2806 Crestwood Kilgore, TX 75662	Executive Vice President, Advisory Director	0	Banking	0
T.J. Craver 103 Eastridge Kilgore, TX 75662	Secretary	27	Banking	0
Doyle Freeman 2307 Ivy Street Kilgore, TX 75662	Vice President	10	Banking	0
Hunter Parks P.O. Box 1252 Kilgore, TX 75662	Advisory Director	50	Oil & Gas	.13
Joe M. Pearson P.O. Box 918 Kilgore, TX 75662	Advisory Director	50	Banking Investments	.13

C.R. Wooldridge P.O. Box 449 Tyler, TX 75710	Advisory Director	0	President, Bank Management Services Company, Tyler, Texas	0
Ivan M. Kerr P.O. Box 1342 Kilgore, TX 75662	Advisory Director	50	President Kerr Engineering & Construction Co., Inc.	.13
Clarence H. Laird P.O. Box 456 Kilgore, TX 75662	Vice President	40	Banking	.11
O. W. Potter P.O. Box 1578 Kilgore, TX 75662	Advisory Director	0	President Woodbine Production Co. (Oil & Gas)	0
Payton McKnight P.O. Box 1031 Tyler, TX 75710	Advisory Director	0	Independent Oil & Gas Operator	0
J.L. Blair P.O. Box 520 Kountze, TX 77625	Advisory Director	0	Kountze Insurance Agency	0
C.W. Rhodes P.O. Box 961 Kilgore, TX 75662	Advisory Director	0	President Dusty Rhodes Ford, Inc.	0

Bob Barbee P.O. Box 1923 Kilgore, TX 75662	Advisory Director	0	President Oil Patch Pipe & Supply	0
Archie Young P.O. Box 488 Carthage, TX 75633	Advisory Director	0	President, Drew Wood, Inc. (mechanical contracting)	0
James D. Berry, Jr. 2 Turtle Creek Village, Suite 1124 Dallas, TX 75219	Advisory Director	0	President Berry Brothers Petroleum, Inc.	0
Frank E. Brown P.O. Box 1094 Kilgore, TX 75662	Advisory Director	0	President Brown Measurement & Equipment Co. (Oil & Gas)	0

After the consolidation, each of the individuals listed above will have the right to exchange his shares of stock of the Bank for shares of the Holding Company's common stock and receive either Subordinated Debentures or the right to have indebtedness assumed, as the case may be. See "The Plan of Reorganization." Each of these individuals will then hold the same amount of common stock in the Holding Company as he now holds in the Bank. The number of shares beneficially owned by the directors and officers of the Bank as a group is 16,202. The directors and officers of the Bank as a group own 43.20% of the common stock of the Bank.

Capital Structure of the Bank

The Articles of Association of the Bank authorize the issuance of 37,500 shares of common stock, par value $20.00, all of which are issued and outstanding. The table below sets forth the capitalization of the Bank on September 1, 1982.

Title or Class of Securities	No. of Shares Authorized	No. of Shares Outstanding on Sept. 1, 1982
Common Stock $20.00 par value	37,500	37,500

Remuneration of Directors and Principal Officers

The aggregate compensation paid to all of the directors and principal officers of the Bank, including discretionary cash bonuses and director's fees for the last fiscal year amounted to a total of $442,225. The sum $70,745 has been allocated to the pension and retirement benefit plan of the officers of the Bank. No officer or director received aggregate annual compensation in excess of $50,000 for the year.

Transactions with Directors, Officers and Associates

Certain of the officers, directors and principal shareholders of the Bank (and their associates) have deposit accounts and other transactions with the Bank including loans in the ordinary course of business. An "associate" includes a corporation or other entity of which an officer or director of the Bank is an officer, partner or 10% shareholder, any trust or estate of which he is a

trustee, executor or significant beneficiary, or any relative or spouse, or spouse's relative who lives in his home.

All loans or other extensions of credit made by the Bank from 1978 to present to officers, directors, principal shareholders of the Bank and to associates of such persons were made in the ordinary course of business on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions transactions with persons other than aforementioned and did not involve more than the normal risk of collectibility or present other unfavorable features.

The Bank expects to continue to have such transactions on similar terms with its directors and their associates in the future. As of June 15, 1982, the Bank had an aggregate total of approximately $54,511,059 in loans outstanding; approximately $717,647 or 1.18% of this total constituted loans to officers and directors.

Trusteed Affiliate

Kilgore First Corporation (hereinafter "KFC") was organized by the Board of Directors of the Bank of July 9, 1969 as a trusteed affiliate for the sole use and benefit of the shareholders of the Bank. KFC was organized to buy, sell, lease, hold or otherwise encumber both real and personal property of all descriptions.

KFC has 37,500 shares authorized at no par value.

The officers and directors of KFC are as follows:

Name and Address	Position
Harris R. Fender P.O. Box 449 Tyler, TX 75710	Chairman of the Board and Director
C. R. Wooldridge P.O. Box 449 Tyler, TX 75710	President and Director
D. R. Brogoitti 2803 Crestwood Kilgore, TX 75662	Vice President and Director
David M. Fender P.O. Box 449 Tyler, TX 75710	Vice President and Director
H. R. Fender, Jr. P.O. Box 449 Tyler, TX 75710	Vice President and Director
James W. Capps 2806 Crestwood Kilgore, TX 75662	Vice President, Secretary/ Treasurer, Agent and Director
Joe M. Pearson P.O. Box 918 Kilgore, TX 75662	Advisory Director

Since the creation of KFC it has engaged in the following real property transactions:

August 1, 1969	Purchase of 8.255 acres of land for future construction
August 16, 1972	The sale of 2.835 acres of land to the Bank to be used for the Bank's new building.

January 12, 1977	KFC obtained a $1,000,000 loan from American Amicable Life Insurance Company to be used for the construction of a shopping center.
December 19, 1979	KFC sold a triangular tract of land to the Bank for the expansion of the Bank's motor bank facilities

On January 13, 1982, each shareholder of the Bank received one share of KFC for each share of the Bank owned.

Financial Information

Set forth below are summarized financial information and the management's analysis of the financial condition and operations of the Bank.

FINANCIAL STATEMENTS FOUND ON PROSPECTUS PAGES 49 THROUGH 64 HAVE BEEN INTENTIONALLY OMITTED.

COMPARISON BETWEEN HOLDING COMPANY STOCK AND STOCK OF KILGORE FIRST NATIONAL BANK

The Holding Company's Articles of Association authorize the issuance of 1,000,000 shares of common stock, par value $1.00, and 1,000,000 shares of cumulative preferred stock, par value $1.00. If the Plan of Reorganization is effected, 37,500 shares of common stock of the Holding Company will be issued and outstanding (less dissenters' shares, if any).

Authorized But Unissued Stock

The Articles of Association of the Bank authorize the issuance of 37,500 shares of common stock, par value $20.00, all of which are issued and outstanding. The Articles further provide that the numbe of shares of capital stock may be increased or decreased in accordance with the provisions of the laws of the United States of America. As permitted by Texas law, the Holding Company may issue additional shares of stock up to the total amount of common stock and preferred stock authorized without obtaining prior approval of the shareholders. However, at this time the Holding Company has no intention to issue any additional stock.

Dividend Rights

The holders of common stock of the Bank are entitled to dividends when, as and if declared by the Bank's Board of Directors out of funds legally available therefore. The National Bank Act requires the approval of the Comptroller of the Currency for payments of dividends by a national bank of dividends declared in any year which exceed the total of net profits for that year combined with retained net profits for the preceeding two years, plus any required transfer to surplus.

Similarly, the holders of the Holding Company common stock will be entitled to dividends when, as and if declared by the Holding Company's Board of Directors out of funds legally available therefore.

If the Plan is consummated, the Holding Company's Board of Directors may determine that it is in the best interest of the Holding Company and its shareholders not to

pay dividends to its shareholders if the funds otherwise to be used for the payment of such dividends are required to service the debt to be incurred by the Holding Company. Therefore, shareholders of the Holding Company will not receive dividends until the debt level of the Holding Company is substantially reduced. The amount of dividends, if any, that may be declared by the Holding Company will necessarily be dependent on may factors, including future earnings, capital requirements and business conditions as they affect the Bank, since the Holding Company is dependent upon dividends paid by the Bank for its revenues. In addition, the ability of the Holding Company to pay dividends will be affected by fluctuations in the interest rates which will determine the amount of interest expense which the Holding Company must pay from time to time on its indebtedness.

Voting Rights

The holders of common stock of the Bank are entitled to one vote per share. Similarly, the holders of the Holding Company's common stock are entitled to one vote per share. In the event the Board of Directors of the Holding Company determine to issue preferred stock, holders of such stock would have no voting rights for those shares unless expressly provided for by the Board of Directors.

In accordance with the By-Laws of the Bank, shareholders may submit proposals for consideration at the regularly scheduled annual meeting of the Bank if the proposals are submitted at least twenty-one days before the date of the annual meeting. The annual meeting of the Bank is held on the third Wednesday in March.

As provided by Texas law, the Holding Company

may consolidate or merge with or into another corporation upon approval of the plan of merger or consolidation by the affirmative vote of the holders of at least two-thirds of the outstanding shares of the Holding Company. Texas law additionally provides that each outstanding share of the Holding Company shall be entitled to vote on the proposed plan of merger or consolidation, whether such share has voting rights under the provisions of the Articles of Incorporation of the Holding Company. With respect to the merger or consolidation of the Bank, the National Bank Act provides that a national banking association may merge or consolidate with a national banking association or a bank incorporated under the laws of any state with the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding. Both the laws of the State of Texas and the National Bank Act provide that dissenting shareholders have appraisal rights with respect to mergers and consolidations. See "Appraisal Rights of Dissenting Shareholders."

Cumulative Rights

As required by the National Bank Acr, shareholders of the Bank have cumulative voting rights in the election of Directors. However, the Articles of Incorporation of the Holding Company provide that cumulative voting shall not be permitted.

Preemptive Rights

Shareholders of the Bank presently have preemptive rights to subscribe to any additional issue of stock. However, as permitted by Texas law, the Articles of Incorporation of the Holding Company provide that no share-

holder shall be entitled to subscribe to any additional issue of stock of any class of the capital stock of the Holding Company.

Liquidation Rights

In the event of liquidation, the shareholders of the Bank are entitled to receive pro rata any assets distributable to the shareholders. Shareholders of common stock of the Holding Company have similar rights on liquidation, but they are subject to any prior rights of preferred shareholders. See "Description of Kilgore First Bancorp, Inc.—Description of Preferred Stock."

Assessment and Redemption

Shares of the common stock of the Bank are fully paid and nonassessable. Similarly, shares of Holding Company stock to be issued and delivered if the Plan of Organization is effected will be fully paid and nonassessable.

The Holding Company may redeem its shares without the approval of its shareholders and, in most instances, without the prior approval of the Federal Reserve Board.

Shares of the Bank may be redeemed with the prior approval of two-thirds of its shareholders.

OTHER MATTERS

This Special Meeting is called for the purpose set forth in the notice. The management of the Bank does not know of any matter for action by the shareholders at the meeting other than the matters described in the notice.

However, the enclosed Proxy will confer discretionary authority with respect to matters which are not known to the management at the time of printing hereof and which may properly come before the meeting. It is the intention of the persons named in the Proxy to vote in pursuance of the Proxy in accordance with the recommendation of the management.

Legal Opinions

Legal matters in connection with the Plan of Organization have been passed upon for the Holding Company by Messrs. Ford, Reiff & Burgess, Attorneys at Law, 1400 United Bank Tower, Austin, Texas.

Experts

The financial statements of the Bank included herein have been examined to the extent and for the period indicated in the reports of Don C. Horton and Co., Independent Certified Public Accountants, and have been included herein in reliance upon the reports of said firm and upon the authority of said firm as experts in accounting and auditin. It is not anticipated that representatives of Don C. Horton & Co. will attend the shareholders' meeting, but such representatives will be available to respond to appropriate questions.

Indemnification

The registrant has no provisions relating to the indemnification of directors, officers or controlling persons against liability arising under the Securities Act of 1933.

Insofar as indemnification for liabilities arising

under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy and is therefore unenforceable.

Interests of Named Experts and Counsel

No expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis, nor at the time of such preparation or certification had a substantial interest in the registrant or any of its parents or subsidiaries nor was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer, or employee.

APPENDIX A

Agreement and Plan of Consolidation

AGREEMENT AND PLAN OF CONSOLIDATION

AGREEMENT AND PLAN OF CONSOLIDATION made this 16th day of September, 1982, between Kilgore First National Bank ("Existing Bank") and New Kilgore First State Bank ("New Bank") and joined in by Kilgore First Bancorp, Inc., a Texas coraporation ("Company").

WITNESSETH

A. Existing Bank is a national banking association duly organized and existing under the laws of the United States of America.

B. New Bank is a state banking association organized under the Texas Banking Code of 1943, as amended.

C. Existing Bank has, and will have as of the Effective Time (hereinafter defined in paragraph 12), authorized capital stock of 37,500 shares of common stock, $20.00 par value ("Existing Bank Common Stock"), all of which 37,500 shares have been duly issued and are, and will be as of the Effective Time, validly outstanding.

D. New Bank will have as of the Effective Time authorized capital stock of 5,000 shares of common stock, $1.00 par value ("New Bank Common Stock"), of which 5,000 shares are, or will be as of the Effective Time, issued and outstanding. All of the issued and outstanding shares of New Bank are owned by Company.

E. Company is a corporation duly organized and existing under the laws of the State of Texas with authorized capital stock consisting of 1,000,000 shares of Common

Stock, $1.00 par value ("Company Common Stock") and 1,000,000 shares of Cumulative Preferred Stock, $1.00 par value ("Company Preferred Stock") and with authorized 12% Subordinated Debentures (the "Company Debentures") in the aggregate amount of $1,777,900. As of the Effective Time the Company has 1,000 shares of Common Stock outstanding.

F. Majorities of the Boards of Directors of Existing Bank and of New Bank have approved this Consolidation Agreement under which New Bank shall be consolidated with Existing Bank and have authorized the execution hereof; and the Board of Directors of Company has approved this Consolidation Agreement, authorized Company to join in and be bound by this Consolidation Agreement, and authorized the undertakings herein made by Company.

NOW, THEREFORE, in consideration of the premises, Existing Bank and New Bank, joined by Company, hereby agree that New Bank shall be consolidated with Existing Bank on the following terms and conditions:

1. **Consolidation.** At the Effective Time, New Bank shall be consolidated with Existing Bank under the Articles of Association of Existing Bank. Said consolidation shall be pursuant to the provisions of and with the effect provided in Section 215 of Title 12, United States Code.

2. **Continuing Bank.** At the Effective Time, the name of Existing Bank (hereinaftear referred to as "Continuing Bank" whenever reference is made to it as of the time of consolidation or thereafter) shall be "Kilgore First National Bank." The Articles of Association of Continuing Bank shall be the same as the Articles of Association of Existing Bank at the time of the consolidation. The bylaws of

Existing Bank in effect immediately prior to the consolidation shall become the bylaws of Continuing Bank. The established office and facilities of Existing Bank immediately prior to the consolidation shall become the established office and facilities of Continuing Bank.

3. **Property and Rights of Continuing Bank.** At the Effective Time, the corporate existence of Existing Bank and New Bank shall as provided in Section 215 of Title 12, United States Code, be consolidated with and become Continuing Bank; and Continuing Bank shall be deemed to be the same corporation as Existing Bank and New Bank. All rights, franchises and interests of Existing Bank, respectively, in and to every type of property (real, personal and mixed) and choses in action shall be transferred to and vested in Continuing Bank by virtue of such consolidation without any deed or other transfer. Continuing Bank at the Effective Time and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, transfer agent and registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, and in every agency capacity, in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by Existing Bank and New Bank, respectively, at the Effective Time.

4. **Liabilities of Continuing Bank.** At the Effective Time, Continuing Bank shall be liable for all liabilities of Existing Bank and of New Bank, respectively; and all deposits, debts, liabilities, obligations and contracts of Existing Bank and of New Bank respectively, matured or unmatured, whether accrued, absolute, contingent or

otherwise, and whether or not reflected or reserved against on balance sheets, books of account or records of Existing Bank or New Bank, as the case may be, including all liabilities of Existing Bank and the New Bank for taxes, whether existing at the Effective Time or arising as a result of or pursuant to the consolidation, shall be those of Continuing Bank and shall not be released or impaired by the consolidation; and all rights of creditors and other obligees and all liens of property of either Existing Bank or New Bank shall be preserved unimpaired.

5. **Directors, Advisory Directors and Officers of Continuing Bank.** The directors, advisory directors and officers of Continuing Bank at the Effective Time shall be those persons who are directors, advisory directors and officers, respectively, of Existing Bank immediately before the Effective Time. The committees of the Board of Directors of Continuing Bank at the Effective Time shall be the same as, and shall be composed of the same persons who are serving on, committees of the Board of Directors of Existing Bank as they exist immediately before the Effective Time.

6. **Exchange and Consideration.** At the Effective Time:

(a) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be redeemed and cancelled and shall be exchangeable for $1.00 in cash, and such shares shall revert to the status of authorized but unissued shares without any action by the holder thereof.

(b) Shares of the authorized but unissued common stock of the Company shall be deemed to be issued in respect to the shares of Existing Bank

Common Stock exchanged therefor under subparagraph (c) below.

(c) Except as otherwise set forth below, the shares of the Existing Bank Stock which are owned beneficially on the Effective Date by each shareholder of the Existing Bank and all rights in respect of such shares of Existing Bank Stock, shall, without any action on the part or the holder thereof, be converted into and exchanged for the following:

(i) One (1) share of Company Common Stock; and

(ii) Consideration equal in aggregate value to $98.67 multiplied by the number of shares of Existing Bank Stock owned by such shareholder of the Existing Bank which shall be composed of the following kinds of consideration:

(1) The right to have assumed and discharged by Company indebtedness related to the acquisition of the shares of Existing Bank Stock owned by such shareholder of the Existing Bank which was in existence on September 1, 1982, ("Assumable Debt"); or

(2) to the extent that Assumable Debt is less than $98.67 multiplied by the number of shares owned by such Eligible Stockholder, a Company Debenture in a principal amount equal to the difference between the actual amount of Assumable Debt and $98.67 multiplied by the number of shares of Existing Bank Stock owned by such Eligible Stockholder will be issued to such

Eligible Stockholder. The Company Debentures shall be issuable only in denominations of $100 or a multiple thereof. To the extent Company Debentures are issuable to a shareholder of the Bank in a principal amount other than $100 or a multiple thereof, the difference between the principal amount of the Debenture otherwise issuable to the shareholder of the Existing Bank and the greatest multiple of $100 which shall be less than such principal amount shall be paid in cash to the shareholder of the Existing Bank.

(iii) No fractional shares of Company shall be issued, but each shareholder entitled to a fractional share shall be paid the cash equivalent of such fractional share based upon the net book value per share of Existing Bank Stock at the effective date.

(d) The shares of New Bank Common Stock outstanding at the Effective Time shall be converted into shares of Continuing Bank; with the effect that the number of shares of the capital stock of Continuint Bank outstanding immediately after the Effective Time shall be equal to the number of shares of Existing Bank Common Stock outstanding immediately before the Effective Time.

(e) The capital of New Bank shall become a part of the unrestricted capital surplus of Continuing Bank.

(f) The shares of New Bank Common stock issued and outstanding at the Effective Time, as converted pursuant to sub-section (d) of this Section 5, shall continue to be issued and outstanding shares of Continuing Bank.

7. **Stock Transfer.** After the Effective Time:

(a) Each holder of an outstanding certificate or certificates which prior thereto represented shares of Existing Bank Common Stock, may surrender the same to Company, and each such holder shall be entitled upon such surrender to receive from Company in exchange therefor, without cost to him, a certificate or certificates, representing the number of shares of Company Common Stock into and for which the shares of Existing Bank Common Stock so surrendered shall have been converted and exchanged as aforesaid, of such denominations and registered in such names as such holder may request. If such shares are to be issued to a person other than a person in whose name the certificate surrendered in exchange therefor is registered, it shall be a condition of such issuance that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, and that the person requesting such exchange pay to Company any transfer or other taxes required by reason thereof, or establish to the satisfaction of Company that such taxes have been paid or are not payable. Until so surrendered, each such outstanding certificate which, prior to the Effective Time, represented shares of Existing Bank Common Stock, shall be deemed for all purposes, subject to the provisions of Section 13 hereof, to evidence the ownership of the shares of Company Common Stock into and for which such shares have been so converted and exchanged; provided, however, that upon surrender of such certificate theretofore representing shares of Existing Bank Common Stock, there shall be paid to the record holder or holders of the certificate or certificates of Company Common Stock issued in exchange therefor, the amount without interest thereon, of such dividends and other distributions, if any,

which theretofore have become payable with respect to the number of shares of Company Common Stock represented thereby. If any such shareholder of Existing Bank is unable to locate any of his certificate(s) which prior to the Effective Time represented shares of Existing Bank Common Stock, Company shall issue a check to such shareholder in the amount to which such shareholder would otherwise be entitled to receive hereunder without his surrendering such certificate(s), upon receipt by Company of an indemnity bond in favor of Company and satisfactory in all respects, including without limitation the issuer and the amount thereof, to Company.

(b) The stock transfer books of Existing Bank shall be closed as of the close of business on the Closing Date (hereinafter defined), and no transfer of record of any of the shares of Existing Bank Common Stock shall take place thereafter.

8. **Approval by Shareholders of Existing Bank and New Bank.** This Consolidation Agreement shall be submitted to the shareholders of Existing Bank and New Bank, at a meeting called to be held as promptly as practicable after proper notice or waiver of notice. Upon approval by the requisite votes of the shareholders of Existing Bank and New Bank, this Consolidation Agreement shall be made effective as soon as practicable thereafter in the manner provided in Section 12 hereof.

9. **Termination of Agreement.** This Consolidation Agreement may be terminated and abandoned at any time prior to the Effective Time, whether before or after action thereon by the shareholders of Existing Bank or New Bank:

(a) At any time by the mutual consent of the Boards of Directors of Existing Bank and Company;

(b) By the Board of Directors of Company if any of the conditions to the obligations of the Company contained herein shall not have been satisfied, or waived as of the Closing Date;

(c) By the Board of Directors of Existing Bank if any of the conditions to the obligations of Existing Bank contained herein shall not have been satisfied, or waived as of the Closing Date;

(d) By either Company or Existing Bank if the Closing Date shall not have occurred within one year from the date of this Consolidation Agreement.

In the event of the termination and abandonment off this Consolidation Agreement, the terms and provisions hereof shall be of no further force or effect.

10. **Waiver, Modification and Amendment of this Agreement.** Any of the terms or conditions of this Consolidation Agreement may be waived at any time, whether before or after action thereon by the shareholders of Existing Bank or New Bank, by the Board of Directors of the party which is entitled to the benefits thereof; and the Consolidation Agreement may be modified or amended at any time, whether before or after action thereon by the shareholders of Existing Bank or New Bank, by Company and Existing Bank; provided, however, that such action shall be taken by Existing Bank only if, in the judgment of the Board of Directors of Existing Bank, such waiver, modification or amendment will not have a materially adverse effect on the holders of Common Stock or Existing

Bank. Any waiver, modification or amendment shall be in writing.

11. **Rights of Dissenting Shareholders.** If such consolidation shall be voted for at such meetings by the necessary majorities of the shareholders of each association and state bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller of the Currency ("Comptroller"), any shareholder of any of the associations or State banks so consolidated who has voted agaisnt such consolidation at the meeting of the association or bank of which he is a stockholder, or who has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him when such consolidation is approved by the Comptroller upon written request made to the consolidated association at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates.

The value of the shares of any dissenting shareholder shall be ascertained, as of the effective date of the consolidation, by an appraisal made by a committee of three persons, composed of (1) one selected by the directors of the consolidated banking association; (2) one selected by the majority of the shareholders; and (3) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to the value of the shares of the appellant.

If, within ninety days from the date of consummation of the consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the consolidated banking association. The value of the shares ascertained shall be promptly paid to the dissenting shareholders by the consolidated banking association. Within thirty days after payment has been made to all dissenting shareholders as provided for in this section the shares of stock of the consolidated banking association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the consolidated banking association at an advertised public auction unless some other method of sale is approved by the Comptroller, and the consolidated banking association shall have the right to purchase any of such shares of such public auction, if it is the highest bidder therefor, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price not less than par as its board of directors by resolution may determine. If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders the excess in such sale price shall be paid to such shareholders. The appraisal of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases, rather than as provided in this section, if such provision is made in the State law; and no such consolidation shall be in contravention of the law of the State under which such bank is incorporated.

12. **Closing Date and Effective Time.** The "Closing Date" shall be the later to occur of (i) the date thirty days after the date of the order of the Federal Deposit Insurance Corporation approving the consolidation pursuant to 12 U.S.C.1828(c)(1)(A), (or if such date is not a business day, then the next business day following); or (ii) such later date as Company and Existing Bank may agree upon. Subject to the terms, and upon satisfaction on or before the Closing Date of all requirements of law and the conditions specified in this Consolidation Agreement, including receipt of the approval of the Comptroller of Currency specified in 12 U.S.C. Section 215(a), the consolidation shall become effective at the time specified in the certificate to be issued by the Federal Deposit Insurance Corporation under the seal of the Corporation's office approving the consolidation, such time being herein called the "Effective Time."

13. **Counterparts.** For the convenience of the parties hereto and to facilitate the filing and recording of this Consolidation Agreement, any number of counterparts thereof may be executed, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument, but only one of which need be produced to evidence the participation herein of any signatures to this Consolidation Agreement.

14. **Conditions to this Agreement.** The obligations of the parties hereto are subject to the satisfaction or waiver of each of the following conditions precedent:

(i) that the holders of at least two thirds of the outstanding Common Stock of New Bank and of Existing Bank shall have voted to ratify and confirm the transactions contemplated by this Agreement.

(ii) that the holders of less than ten percent of the Common Stock of existing Bank be entitled to dissent and receive the appraised value of their shares of stock as provided in Section 7 thereof and 12 U.S.C. 215;

(iii) that the Board of Governors of the Federal Reserve System shall have issued an order approving the application of Company to become a bank holding company under Section 3(a)(1) of the Bank Holding Company Act of 1956;

(iv) that the Comptroller of the Currency shall issue an order approving the consolidation of Existing Bank and New Bank.

(v) that the Federal Deposit Insurance Corporation shall issue an order approving the consolidation of Existing Bank and New Bank; and

(vi) that the State Commissioner of Banking shall approve the conversion.

IN WITNESS WHEREOF, Existing Bank, New Bank and Company have caused this Consolidation Agreement to be executed in counterparts by their duly authorized officers and their corporate seals to be hereunto affixed as of the date first above written, and the directors constituting a majority of the Board of Directors of each such bank have hereunto subscribed their names.

KILGORE FIRST NATIONAL BANK

By: _____

D. R. Brogoitti, President

ATTEST:

_____

T. J. Craver, Secretary

A MAJORITY OF THE DIRECTORS OF
KILGORE FIRST NATIONAL BANK

Harris R. Fender	D. R. Brogoitti
R. S. Martin, III	R. E. Spradlin
R. S. Martin, Jr.	M. L. Still

NEW KILGORE FIRST
STATE BANK

By: _____
Harris R. Fender, President

ATTEST:

_____

Charles R. Wooldridge,
Cashier

THE DIRECTORS OF NEW KILGORE
FIRST STATE BANK:

Harris R. Fender.	Harris R. Fender, JR.
D. R. Brogoitti	Charles R. Wooldridge
David M. Fender	James W. Capps

KILGORE FIRST BANCORP, INC.

By: _____
Harris R. Fender, President

ATTEST:

_____
Charles R. Wooldridge, Secretary

APPENDIX B

Appraisal Rights of Dissenting Shareholders

12 U.S.C. 215

Liability of consolidated association; capital stock; dissenting shareholders

(b) The consolidated association shall be liable for all liabilities of the respective consolidating banks or associations. The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national bank in the place in which it is located. If a consolidation shall be voted for at a meeting by the necessary majorities of the shareholders of each association and State bank proposing to consolidate, and thereafter the consolidation shall be approved by the Comptroller, any shareholder of any of the associations or State banks so consolidated who has voted against such consolidation at the meeting of the association or bank of which he is a stockholder, or who has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him when such consolidation is approved by the Comptroller upon written request made to the consolidated association at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates.

Valuation of shares

'c) The value of the shares of any dissenting shareholder shall be ascertained, as of the effective date of the consolidation, by an appraisal made by a committee of three persons, composed of (1) one selected by the vote of the holders of the majority of the stock, the owners of which are entitled to payment in cash; (2) one selected by

the directors of the consolidated banking association; and (3) one selected by the two so selected. The valuation agreed upon by any two of the three appraisers shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment, that shareholder may, within five days after being notified of the appraised value of his shares, appeal to the Comptroller, who shall cause a reappraisal to be made which shall be final and binding as to the value of the shares of the appellant.

Appraisal by Comptroller; expenses of consolidated association; sale and resale of shares; State appraisal and consolidation law

(d) If, within ninety days from the date of consummation of the consolidation, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the Comptroller shall upon written request of any interested party cause an appraisal to be made which shall be final and binding on all parties. The expenses of the Comptroller in making the reappraisal or the appraisal, as the case may be, shall be paid by the consolidated banking association. The value of the shares ascertained shall be promptly paid to the dissenting shareholders by the consolidated banking association. Within thirty days after payment has been made to all dissenting shareholders as provided for in this section the shares of stock of the consolidated banking association which would have been delivered to such dissenting shareholders had they not requested payment shall be sold by the consolidated banking association at an advertised public auction unless some other method of sale is approved by the Comptroller, and the consolidated banking association shall have the right to purchase any of such

shares at such public auction, if it is the highest bidder therefore, for the purpose of reselling such shares within thirty days thereafter to such person or persons and at such price not less than par as its board of directors by resolution may determine. If the shares are sold at public auction at a price greater than the amount paid to the dissenting shareholders the excess in such sale price shall be paid to such shareholders. The appraisal of such shares of stock in any State bank shall be determined in the manner prescribed by the law of the State in such cases, rather than as provided in this section, if such provision is made in the State law; and no such consolidation shall be in contravention of the law of the State under which such bank is incorporated.

APPENDIX "C"

Debenture

A-109

KILGORE FIRST BANCORP, INC.

$98.67 12% Subordinated Debenture Kilgore, Texas

Kilgore First Bancorp, Inc., a Texas corporation (the "Corporation"), for value received, hereby promises to pay to _____, as hereinafter provided, the principal sum $98.67, with interest thereon until fully paid at the rate of 12 percent (12%) per annum. Interest on the unpaid principal of this Debenture shall be paid annually, commencing on the first (1st) anniversary date after the issue date of this Debenture. "Anniversary date" shall mean the date this Debenture is executed and issued. "First anniversary date" shall mean the same day one year later. The principal of this Debenture shall be payable in thirteen (13) equal annual installments, the first of which shall become due and payable on _____.

This Debenture is one of a duly authorized issue of debentures of the Corporation, issued pursuant to certain authorizing resolutions adopted by the Board of Directors of the Corporation of _____, 1982. Upon any acceleration of the principal of this Debenture or upon any dissolution or liquidation of the Corporation the payment of this Debenture shall be subordinated to the prior payment of any Superior Indebtedness of the Corporation, as such may be so designated from time to time by the Board of Directors of the Corporation.

At the option of the holder of this debenture, the unpaid balance of this Debenture shall become immediately due and payable without notice on demand if any payment required by this Debenture is not made when due. The principal and accrued interest to the date of prepayment of this Debenture may be prepaid by the issuer at any time without penalty.

IN WITNESS WHEREOF, Kilgore First Bancorp, Inc., has caused this Debenture to be executed and issued in its corporate name and capacity as of this ____ day of _____, 1982.

KILGORE FIRST BANCORP, INC.

BY; _____

_____

ATTEST:

_____

_____

APPENDIX "E"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 83-2662 & 84-2199

R. S. MARTIN, JR.,

Plaintiff-Appellant,

versus

KILGORE FIRST BANCORP, INC. and
KILGORE FIRST NATIONAL BANK,

Defendants-Appellees

Appeal from the United States District Court for the
Eastern District of Texas

ON PETITION FOR REHEARING
(January 7, 1985)

Before CLARK, Chief Judge, JOHNSON and WILLIAMS, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Signed
United States Circuit Judge

Office - Supreme Court, U.S.
FILED
MAY 15 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1582

In The
Supreme Court of the United States
October Term, 1984

R. S. MARTIN, JR., ET AL.
Petitioners,
v.
KILGORE FIRST BANCORP, INC.
and
KILGORE FIRST NATIONAL BANK
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RICHARD GRAINGER
Post Office Box 491
Tyler, Texas 75710
Telephone: (214) 595-3514
Attorney for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

BEST AVAILABLE COPY

13PP

QUESTION PRESENTED

Are the provisions of 12 U.S.C. §215(d) satisfied by the auction of stock in a bank holding company incorporated under the laws of the State of Texas o rmust stock in a national banking association be auctioned to properly comply with 12 U.S.C. §215(d)?

LIST OF INTERESTED PARTIES

(1) R. S. Martin, Jr.
(2) Coca-Cola Bottling Co. (Biedenharn)
(3) James D. Ballinger
(4) Helen George Bolt
(5) Herbert Cashen
(6) Evelyn Cashen
(7) Herbert Cashen II
(8) Shack Cashen
(9) Gregory Cashen
(10) Mrs. Walter Chandler
(11) Alleyn Cim
(12) John T. Crim, Sr.
(13) L. N. Crim, Sr.
(14) L. N. Crim, Jr.
(15) Charles Duvall
(16) Crown Dickson
(17) D. L. Griffin
(18) Harold Hobenicht
(19) Louise Huffman
(20) Fulton Johnston
(21) James Dick Laird
(22) Mary F. Love
(23) E. B. Mobley
(24) Maxine L. Mobley
(25) Robert Mann c/o Omnibus Corporation
(26) Robert C. Overton
(27) Lois Laird Overton
(28) Robert Carter Overton III
(29) Nadine U. Parks
(30) Nell Laird Pederson
(31) Mrs. Camie Reich
(32) Maud Ovetton Stocker
(33) William Tennis
(34) Kilgore First National Bank
(35) Kilgore First Bancorp, Inc.

TABLE OF CONTENTS

Pages

Questions Presented i
List of Interested Parties ii
Table of Contents iii
Table of Authorities iii
Statement of Jurisdiction 2
Reasoning for Denying Certiorari 2
Statement of the Case 4
Argument 5
Conclusion 8

TABLE OF AUTHORITIES

CASES

Securities Industry Association v. Board of Governors of the Federal Reserve System, 468 U.S. —, 104 S. Ct. 2979, 82 L. Ed. 2d 107 (1984) 3

Securities Industry Association v. Board of Governors of the Federal Reserve System, 468 U.S. —, 104 S. Ct. 3003, 82 L. Ed. 2d 158 (1984) 3

STATUTES

12 U.S.C. §215(d) 5, 6, 7

12 U.S.C. §§1841-1850 5

Bank Holding Company Act Amendments of 1970, Pub.L. No. 91-607, 84 Stat. 1760 (1970) 6

CODE OF FEDERAL REGULATIONS

12 C.F.R. §5.21 6

TABLE OF AUTHORITIES—Continued

Pages

LEGISLATIVE HISTORY

H.R. Rep. No. 387, 91st Cong., 2d Sess. (1970) 6

S. Rep. No. 1984, 91st Cong., 2d Sess. (1970) 6

RULES

United States Supreme Court Rule 17.1(c) 2, 3

No. 84-1582

In The

Supreme Court of the United States

October Term, 1984

R. S. MARTIN, JR., ET AL.

Petitioners,

v.

KILGORE FIRST BANCORP, INC.

and

KILGORE FIRST NATIONAL BANK

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COMES NOW, KILGORE FIRST BANCORP, INC., ET AL., Respondents, who hereby file this appearance and response in opposition to Petitioners' request for a Writ

of Certiorari to this Court to review the decision and judgment of the United States Court of Appeals for the Fifth Circuit.

———o———

STATEMENT OF JURISDICTION

On December 7, 1984, the United States Court of Appeals for the Fifth Circuit entered judgment affirming the interlocutory order of the trial court. Petitioners subsequently filed a Motion for Rehearing which was denied by the United States Court of Appeals for the Fifth Circuit on January 7, 1985.

———o———

REASON FOR DENYING CERTIORARI

After the United States Court of Appeals for the Fifth Circuit denied Petitioners' Motion for Rehearing, Respondents registered the sale of holding company securities with the Securities and Exchange Commission. Respondent Kilgore First Bancorp, Inc. conducted the auction of holding company securities on March 1, 1985. Therefore, the Petitioners' request for a Writ of Certiorari is moot because the sale of securities upon which this litigation is based had already occurred before Petitioners filed their petition for certiorari with this honorable Court.

Further, Rule 17.1(c) of this Court states that a petition for certiorari may be granted when "a federal court of appeals has decided an important question of federal

law which has not been, but should be, settled by this Court . . . ". This Court in *Securities Industry Association v. Board of Governors of the Federal Reserve System,* 468 U.S. —, 104 S. Ct. 3003, 82 L.Ed. 2d 158, 166 (June 28, 1984) and *Securities Industry Association v. Board of Governors of the Federal Reserve System,* 468 U.S. —, 104 S. Ct. 2979, 82 L.Ed. 2d 107, 113 (June 28, 1984), held that federal regulatory agencies should be accorded due deference and latitude in their interpretations of federal statutes. The Respondents in this case were simply following the logical interpretation of this statute as construed by the Office of the Comptroller of the Currency.

Supreme Court Rule 17.1(c) also provides that this Court may grant certiorari if the federal appellate court "has decided a federal question in a way in conflict with applicable decisions by this Court." It is interesting to note that in spite of hundreds of reverse triangular mergers approved by the Office of the Comptroller of the Currency, this is the first time a party has challenged the interpretation of the statute as established by the Office of the Comptroller of the Currency. Nor have the Petitioners been able to cite one case in support of their petition which shows that the United States Court of Appeals for the Fifth Circuit has decided this case in a way in conflict with applicable decisions of this Court or any other federal court.

———o———

STATEMENT OF THE CASE

The majority of the board of directors of Kilgore First National Bank desired to reorganize the bank into a subsidiary of a one-bank holding company in order to take advantage of the increased powers and flexibility statutorily granted to one-bank holding companies. The board chartered an interim state bank and subsequently received approval from the Federal Reserve Bank, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Texas Banking Department to reorganize the bank as a wholly-owned subsidiary of Kilgore First Bancorp, Inc.

The Respondent Kilgore First Bancorp, Inc., was required to obtain at least eighty percent of the stock of the subsidiary bank in order to file a consolidated tax return. Unsure of being able to receive eighty percent acceptance of the tender offer, the organizers of the holding company elected to accomplish the acquisition via a reverse triangular merger, which required a two-thirds shareholder approval.

In October 1982, the requisite two-thirds of the existing shareholders of Kilgore First National Bank voted to reorganize the bank into a wholly-owned subsidiary of Kilgore First Bancorp, Inc. As part of this plan, a reverse triangular merger was completed with an exchange of Kilgore First Bancorp, Inc. securities for Kilgore First National Bank stock.

The Petitioners herein timely filed their dissent to the transaction. Both Petitioners and Respondent Kilgore First Bancorp, Inc., requested that the Office of the Comptroller of the Currency cause an appraisal to be made.

Thereafter, in 1983, the Comptroller's Office issued an appraisal. All of the Petitioners herein were tendered and accepted cash for their shares.

Subsequent thereto, the Respondents pursuant to 12 U.S.C. §215(d) advertised the sale of the holding company securities which would have been delivered to Petitioners had they not dissented. A few days before the auction was to be conducted, Petitioners filed suit and obtained a temporary injunction forestalling the sale of any securities. Both the United States District Court for the Eastern District of Texas and the United States Court of Appeals for the Fifth Circuit ruled favorably for Respondents.

———o———

ARGUMENT

Respondents contend that the auction provisions of 12 U.S.C. §215(d) will lawfully be satisfied by the auction of the securities that the dissenting shareholders would have received had they not dissented. Respondents would argue that Petitioners misunderstood the mechanics of a reverse triangular merger as well as the intent of the applicable statute.

The reverse triangular merger calls for a one-step transaction: bank stock is tendered by the existing shareholders in the bank in exchange for holding company stock. It is not a two-step process as argued by Petitioners.

The statute in question, 12 U.S.C. §215(d), was written before the enactment of the Bank Holding Company Act of 1956, as codified at 12 U.S.C. §§1841-1850. The

statute, as originally drafted, did not contemplate the procedure of a phantom or interim bank being created to consolidate with an existing bank.

However, the Office of the Comptroller of the Currency has taken the position that 12 U.S.C. §215(d) should be interpreted such that stock "which would have been delivered" means holding company stock. The net result is that the bank is a wholly-owned subsidiary of the holding company. Other than the dissenters who declined to participate in the transaction, the shareholders who owned the bank have now effectively reorganized their ownership into the holding company.

The Office of the Comptroller of the Currency has consistently taken the approach that holding company stock should be exchanged for bank stock. Indeed this was discussed in 46 Fed. Reg. 16661, as published on March 13, 1982 and subsequently, as adopted in a regulation adopted at 12 C.F.R. §5.21 (1981).

Congress is well aware of the existence and popularity of one-bank holding companies, especially the use of interim banks and the merger process. These issues were discussed in Bank Holding Company Act Amendments of 1970, Pub. L. No. 91-607, 84 Stat. 1760 (1970); H.R. Rep. No. 387, 91st Cong., 2nd Sess. [1970]; S. Rep. No. 1984, 91st Cong., 2d Sess. [1970]. The Comptroller files an *Annual Report of the Comptroller of the Currency* which is provided to every member of the House and Senate Banking Committees each year. This report discusses the formation of one-bank holding companies through the chartering of an interim bank.

Therefore, Respondents argue here as did the Comptroller to the United States Court of Appeals for the Fifth Circuit that Congress has been aware for years of the direct exchange of holding company stock for bank stock in a corporate reorganization.

The statute at issue here provides that the auction to be conducted is of shares that "would have been delivered" to the dissenting shareholders. The shares that would have been delivered were holding company securities.

The purpose of §215(d) would be defeated if Petitioners' interpretation is followed. This section of the statute is designed to guarantee an equal footing between dissenting shareholders and non-dissenting shareholders. To allow dissenters to force an auction of surviving bank stock, which non-dissenters did not have the option to take, would give the dissenters an unequal treatment. The only reasonable conclusion and equitable application of §215(d) is that its auction provision can only apply to that stock which was delivered to non-dissenting shareholders and which dissenting shareholders had the option to take: stock of the holding company.

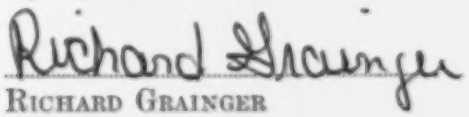
———o———

CONCLUSION

For the foregoing reasons, it is respectfully argued that a petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

RICHARD GRAINGER
Post Office Box 491
Tyler, Texas 75710



RICHARD GRAINGER
Attorney for Respondents